TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 6

AARON HENRY, PETITIONER,

vs.

MISSISSIPPI.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

PETITION FOR CERTIORARI FILED OCTOBER 10, 1963
CERTIORARI GRANTED FEBRUARY 17, 1964

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 539

AARON HENRY, PETITIONER,

vs.

MISSISSIPPI.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y. APRIL 14, 1964

[fol. 1]

IN THE COUNTY COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

CAPTION

Be it remembered that a regular term of the County Court of the Second Judicial District of Bolivar County, in the State of Mississippi, was begun and holden in and for said County and Second District and said State at the Courthouse thereof in the City of Cleveland, on the second Monday of May, A. D. 1962, the same being the 14th day of May, at the time and place and in the manner prescribed by law for the holding of said term of court, when there were present and presiding the Honorable W. D. Jones, Judge of said County Court; Frank O. Wynne, Jr., County Attorney, J. H. Pace, Sheriff; Mary Anne Lindsey, Court Reporter; and Mrs. Walter Lewis, Clerk of the County Court.

The Court being regularly opened by due proclamation of the Sheriff, the following proceedings were had and done, to-wit:

[fol. 2]

Criminal Transcript of Record From J. P. Court—
Sec. 65-66 Code of 1930 Form 451
Tom L. Ketchings Co., Natchez—
Filed April 9, 1962

State of Mississippi
Bolivar County

Copy of the record of the proceedings before me, V. E. Rowe, a Justice of the Peace, of said County, Mississippi, in District No. 3 of said County, in the cause therein set forth; to-wit:

Charge Disturbing the Peace

General Affidavit 3/3/62
Capias Issued 3/3/62

STATE OF MISSISSIPPI,

VS.

AARON HENRY.

JUDGMENT—March 14, 1962

This cause came on to be heard on this date and there appearing F. O. Wynne, Jr., who prosecutes on behalf of Bolivar County and there also appeared Aaron Henry represented by counsel and the Court after hearing all of the evidence found the defendant Aaron Henry guilty as charged and he was sentenced to serve six months in jail and to pay a fine of $500.00 and all cost.

Ordered this the 14th day of March, 1962.

V. E. Rowe, Justice of the Peace.

I, a Justice of the Peace, of said County, certify that the foregoing is a copy of the record of proceedings before me in the cause stated therein as appears on my docket.

Given under my hand this the 14th day of March, A.D. 1962.

V. E. Rowe, Justice of the Peace.

Sec. 65-Code 1930

I, the said Justice of the Peace, further certify that the following are all of the original papers in this cause and that they are attached hereto, to-wit:

General Affidavit	1	1	Capias
Cost Bill	1	1	Appeal Bond
		8	Subpoenas

Given under my hand this the 14 day of March, A.D. 1962.

V. E. Rowe, Justice of the Peace.

Sec. 66-Code, 1930

[fol. 3] [File endorsement omitted]

[fol. 4]

GENERAL AFFIDAVIT—Filed April 9, 1962

#29

The State of Mississippi
County of Bolivar

Before me V. E. Rowe, a Justice of the Peace of District No. 3 in said County and State Frank O. Wynne, Jr. makes oath that on or about 3rd day of March 1962 in said County, District and State that Aaron Henry did then and there wilfully and unlawfully distrub the peace of Sterling Lee Eilert by indecent and offensive conduct at and toward the said Sterling Lee Eilert in that he did then and there wilfully and unlawfully and ~~e~~ntentionally ~~use obsence~~ language to and toward the said Sterling Lee Eilert and by placing his hand on the leg and private parts of the said Sterling Lee Eilert, Against the peace and dignity of the State of Mississippi.

Frank O. Wynne, Jr.

Sworn to and subscribed before me this the 14th day of March 1962.

V. E. Rowe, Justice of the Peace.

[File endorsement omitted]

[fol. 5]

IN THE COUNTY COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

No. 29

STATE OF MISSISSIPPI,

vs.

AARON HENRY.

MOTION FOR A SUBPOENA DUCES TECUM—Filed May 16, 1962

Comes the defendant and moves the Court for an issuance of a subpoena duces tecum commanding W. J. Parks, Superintendent of the Cleveland Separate School District, Cleveland, Mississippi, to appear as a witness for the defendant at the trial of this cause on the 21st day of May, 1962, and to bring with him and produce at the trial of this cause all of school records of the Cleveland Separate School District pertaining to Sterling Lee Eilert.

For grounds of this motion defendant avers that the above requested records are necessary for a proper defense of the defendant in the trial of this cause because the said Sterling Lee Eilert is the prosecuting witness in this cause and the defendant needs to know of his school background.

Robert L. Carter, R. Jess Brown & Jack H. Young,
Attorneys for defendant, By Jack H. Young.

Duly sworn to by Jack H. Young, jurat omitted in printing.

[fol. 6] FIAT

The Clerk of the Circuit Court will issue the writ of subpoena duces tecum as prayed for in the above motion.

....., County Judge.

[File endorsement omitted]

[fol. 7]

IN THE COUNTY COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

No. 29

MOTION FOR A SUBPOENA DUCES TECUM—Filed May 16, 1962

[Title omitted]

Comes the defendant and moves the Court for an issuance of a subpoena duces tecum commanding L. A. Ross, Jr., Sheriff of Coahoma County, Mississippi, to appear as a witness for the defendant at the trial of this cause on the 21st day of May, 1962, and to bring with him and produce at the trial of this cause all automobile registration records of Coahoma County, Mississippi, in his custody, for the year 1961-1962.

For grounds of this motion defendant avers that the above requested records are necessary for a proper defense of the defendant in the trial of this cause because testimony adduced in the trial of this cause in the Court below indicated that the State had made use of said records in obtaining defendants' conviction.

Robert L. Carter, R. Jess Brown & Jack H. Young,
Attorneys for defendant, By Jack H. Young.

Duly sworn to by Jack H. Young, jurat omitted in printing.

[fol. 8] FIAT

The Clerk of the Circuit Court will issue the writ of subpoena duces tecum as prayed for in the above motion.

Ordered, this —— day of May, 1962.

....., County Judge.

[File endorsement omitted]

[fol. 9]

IN THE COUNTY COURT OF THE SECOND JUDICIAL DISTRICT,
BOLIVAR COUNTY, MISSISSIPPI

No. 29

STATE OF MISSISSIPPI,

vs.

AARON E. HENRY.

ORDER DENYING MOTIONS FOR SUBPOENA DUCES TECUM—
May 16, 1962

This cause came on to be heard this day on two motions filed herein by the defendant wherein he moves this Court for the issuance of a subpoena duces tecum commanding W. J. Parks, Superintendent of the Cleveland Separate School District to produce at the trial of this cause all school records pertaining to Sterling Lee Eilert and also moves this Court for the issuance of a subpoena duces tecum commanding L. A. Ross, Jr., Sheriff of Coahoma County, Mississippi, to produce on trial of this cause all automobile registration records of Coahoma County, Mississippi, in his custody, for the year 1961-1962.

The Court after hearing arguments by Counsel for the defendant and the State is of the opinion that the two motions should be denied. Therefore, both motions filed herein by the defendant are hereby overruled.

Ordered this the 16th day of May, 1962.

[File endorsement omitted]

[fol. 13]

IN THE COUNTY COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

May, 1962 Term

No. 29

Disturbing the Peace

THE STATE OF MISSISSIPPI,

vs.

AARON E. HENRY.

Transcript of Hearing—May 21, 1962

Be It Remembered that on Monday, May 21, 1962, at the regular May 1962 term of the Court aforesaid, there came on for hearing before the Honorable W. D. Jones, County Judge, and a duly empanelled, qualified and sworn jury, the above styled cause, at which time the following testimony was adduced and exhibits introduced, to-wit:

APPEARANCES:

For the State of Mississippi:

Hoke Stone, District Attorney, Lambert, Mississippi;

Frank O. Wynne, Jr., County Prosecuting Attorney, Merigold, Mississippi.

For the Defendant:

Robert J. Carter, Attorney, New York, N. Y.;

R. Jess Brown, Attorney, Vicksburg, Mississippi;

Jawn A. Sandifer, Attorney, New York, N. Y.

Court: Number 29, State of Mississippi vs. Aaron Henry, what say the State?

County Atty: State's ready.

Court: What say the defendant?

Atty Carter: Your Honor, Henry hasn't arrived yet. He's coming in from Clarksdale.

[fol. 14] County Atty: It will be all right.

Court: Well, we can take advantage of this time and you can have your conferences with the witnesses.

(Court takes recess.)

Court: Jury No. 1 come to the box.

(Jury takes the box.)

Atty Carter: I want to be sure of some features before we start this case. The defendant in this case has been charged—this charge should be read he be arraigned before the jury is empanelled.

Court: This is an appeal and there is no arraignment.

Atty Carter: At that point then, before the jury is called, we have some objections.

District Atty: Would the court like to hear this out of the presence of the jury?

Atty Carter: We would prefer that.

County Atty: It would be best out of the presence of the jury.

Court: Let the jury go back to their room.

Jury Retires

DEFENDANT'S MOTION TO DISMISS AND OVERRULING THEREOF

Atty Carter: We are making a motion to dismiss or quash, whichever is proper under the circumstances, on the grounds that the affidavit on which this defendant was tried is defective. The only affidavit, the only papers that we find in this file that is before this court is a single affidavit signed by the County Attorney on March 14th dated March 14, 1962, in which he swears to things which he could not possibly swear to and also that the affidavit [fol. 15] is, there is a rubber stamp by the Justice of the Peace below and it shows that it was not signed in his presence, and we contend that the affidavit, the general affidavit on which this man was tried below was therefore defective; that the Justice of the Peace therefore acquired no jurisdiction to try this case, and that the jurisdiction of this court on appeal is as limited, and as the Justice of the Peace had no jurisdiction, this court has no jurisdiction,

and we cite you Bramlett vs State, which is 8 Southern Second 234. On that grounds we move to dismiss the charge against the defendant or to quash the charge.

District Atty: Your Honor, on the issues that the counsel raised about the stamp, Judge Rowe is the elderly J. P. as you know who is Justice of the Peace in the Third District, and it is true that this affidavit was taken before him, signed by Mr. Wynne, and was taken over his stamp. Now Judge Rowe—it is impossible for him to sign his name. If your Honor requires proof on that, we could put on some. He isn't here. We can put on Mr. Nassar here. He actually did stamp it, he did not sign it, he cannot sign it.

County Atty: It is a physical impossibility for him to sign.

District Atty: We are aware of that situation and should have taken it up with the counsel possibly before court started.

Court: Motion overruled.

Atty Sandifer: Your Honor, as an extension on Mr. Carter's argument with respect to defectiveness of this general affidavit, the fact that it was stamped by the Justice of the Peace is only a part of our argument. Now, it's very basic that at most all that the Justice of the Peace could have done on this general affidavit would have been to [fol. 16] hold the defendant for purposes of the arrest. The affidavit purports to be on direct knowledge of Mr. Wynne which absolutely—I mean it is clear that it couldn't possibly have been with his personal knowledge, but our proposition here is that inasmuch as for the purposes of the Justice of the Peace acquiring jurisdiction in order to try this case they would have to have had the affidavit of the complainant involved; and if you will note here on the judgment roll that is certified, the Justice of the Peace clearly states that the only thing that he had before him at the time he tried this case was the general affidavit and that is basically what our position here—that the Justice of the Peace under those circumstances did not acquire jurisdiction.

Court: Motion overruled. Anything further?

Atty Carter: Yes, sir. We now want to make—you observe that this courtroom is—negroes and whites are sitting in this courtroom apart from one another. Now, this is a State building. We contend that it is against the basic law for any State building to have segregation based on race or color. We also contend that under the circumstances that this defendant—that it is illegal; that it denies him due process to be tried in a courtroom under which negroes and whites are being segregated without regard on the base of race or color in violation of the Constitutional rights. We, therefore, request the court to issue instructions to persons sitting in this courtroom that they may sit anywhere they please.

Court: Motion overruled. Bring the jury back.

Jury Returns to Box

[fol. 17] The only challenge for cause was made for juror, Dishongh, by Attorney Carter. The questions by Attorney Carter and the answers by the juror and questions by the Court and answers and the ruling of the Court are as follows:

Atty Carter: Mr. Dishongh, do you work for the—

Mr. Dishongh: I work for myself.

Q. I haven't examined you, have I?

A. No, you haven't.

Q. I think you said you hadn't lived in Mississippi all your life.

A. That's right.

Q. How long have you been out of the State?

A. Fifteen years.

Q. How long have you been back?

A. Since the war.

Q. You were in the Army?

A. In the Navy.

Q. Now, do you—you don't have any knowledge of this case?

A. Just only what the kids have discussed. I have a boy in high school, just what he discussed.

Q. Oh, you had a boy in high school and they discussed this case. Your boy knows the complaining witness?

A. No.

Q. But the complaining witness talked to him and other children about this case?

A. That's true.

Defendant's Challenge to Jurors and Motion to Dismiss Overruled

Atty Carter: We want to make a challenge for cause in respect to Mr. Dishongh. Because of his own testimony, it appears that his children have talked to him about this case and have talked to the complaining witness, and we feel that this is too close a connection towards the facts in [fol. 18] the case and for that reason, we think that he should not be on this jury.

Court: Mr. Dishongh, can you hear the evidence given by the witnesses and take the instructions as given to you by the Court and go into the jury box and jury room and consider that and nothing else and return a fair and impartial verdict?

Mr. Dishongh: I can.

Court: Does the fact—I believe you said you had heard discussion of it—was that any of the witnesses that you heard?

Mr. Dishong: No, it was not any witnesses.

Court: From that did you form or express an opinion?

Mr. Dishongh: No sir. I did all the listening.

Court: And regardless of what you heard, you can and will try the case solely on the law as given to you by the Court and the witnesses that are examined?

Mr. Dishongh: That's right.

Court: Motion is overruled.

Atty Carter: We have a—at this point, your Honor, we have a larger challenge against the whole array of jurors. We want to base our challenge on the grounds that the County Attorney—the State—in terms of using its challenges in quest of this jury has excused every non-white member of the jury. It has excused Y. T. Fong, who is an oriental, excused Herman Perry, who is a negro, excused

Hal Maxon, who is a negro and has excused Jack Silas, who is a negro. We think that the State is bound by virtue of the Constitution and laws of the United States not to select juries or to choose jurors on the basis of race and color; that it exercises its peremptory challenges in this regard, it is more bound than would be the defendant in [fol. 19] the case, because of the fact that it is representing the State and must act in accordance with the Constitution and laws of the United States. We, therefore, challenge this array; we contend that by virtue of the action of the State's attorney in this case that this defendant has been denied the representation of his peers on the jury and that negroes have been excluded and non-whites have been excluded from the jury based upon race or color and violation of this defendant's right under the 14th Amendment and equal protection clause and the due process clause which forbids the exclusion of negroes or any person from juries on the basis of race or color by State action. We contend that this has taken place in this Court today, and that this defendant is not being tried fairly and impartially by a jury of his peers in accordance with the guarantees of the 14th Amendment.

Court: The motion is overruled.

The State excused, peremptorily, jurors Fong, Perry, Maxon and Silas.

The Defendant excused, peremptorily, jurors Danna, Langston, Dishongh, Pounds, Woods, and Kline.

Jury sworn to try issue between State and Defendant.

(Recess at 12:00 until 1:30 P. M.)

(Court reconvened at 1:30 P. M. same day.)

Jury in Box

Atty Carter: We want all the witnesses who are testifying to fact—we want them ex luded from the courtroom and we invoke the rule. We want Mr. Pearson to leave the courtroom.

District Atty: Mr. Pearson is a practicing lawyer, and I believe under Court rules he is an officer of the Court. [fol. 20] Now, we did not summon him, he is your witness.

Atty Carter: I thought you had him on your list. As far as Mr. Pearson is concerned, we want Mr. Pearson to testify but we want him excluded from the courtroom.

Court: I think he can stay in.

Atty Carter: I beg your pardon, sir?

Court: He can stay in the courtroom—he is an attorney.

Atty Carter: Your Honor, he is not an attorney in this case. He will be giving testimony. We think that he will be called upon to testify to various facts, and he has no more right under our judgment to be in the courtroom than any other ordinary witness, and we submit that any officer who is going to testify for the State has no right to be here at this time.

Court: He is not going to testify for the State.

Atty Carter: Well, Mr. Pearson is not, but there is an officer over there I understand will testify for the State.

County Atty: Mr. Nassar.

Atty Carter: Mr. Nassar.

County Atty: He's excused.

Atty Carter: I beg your pardon?

Court: He is a deputy sheriff and he is excused from the rule.

County Atty: Oh, we have no objection to Mr. Nassar being out of the courtroom.

District Atty: In order to clear that point, Manuel, would you step out?

(Witness leaves courtroom)

Atty Carter: Mr. Pearson has not been sworn. We would like for him to be sworn. (Witness is sworn).

[fol. 21] Court: All right, proceed with the examination.

Atty Carter: Is it my understanding, your Honor, that we have asked that Mr. Pearson be excluded from the Court?

Court: I ruled that he is an officer of the Court and attorney at law and he will be permitted to remain. He is not a State witness.

Atty Carter: Your Honor, I want to press this a little further, particularly as far as Mr. Pearson is concerned: that in view with his relationship with this defendant and in view of the fact that he is not an attorney in this county,

he is an officer of another county, that it would be prejudicial to our case to have him remain in the courtroom to hear testimony. We again urge you, your Honor, to rule to have him excluded and subjected to the same rule as other witnesses who are going to testify, other than character witnesses.

Court: The ruling stands. Proceed with the examination.

STERLING LEE EILERT, witness for and on behalf of the State, being first duly sworn, testified as follows:

Direct examination.

By Frank O. Wynne, Jr., County Attorney:

Q. Would you state your name to the Court please, sir?

A. Sterling Lee Eilert.

Q. Now Sterling Lee, I want you to talk up loud so the jury here can hear you and the members of the Court here can hear you. Sterling Lee, where do you live?

A. 290 Garland in Memphis, Tennessee.

Q. How long have you lived in Memphis, Tennessee?

[fol. 22] A. All my life, except for about three and a half, maybe four years I lived here in Cleveland.

Q. Three and a half or four years that you lived in Cleveland, Mississippi?

A. Yes, sir.

Q. Do you know what years you were in Cleveland, Mississippi?

A. '58 and '59 and '60.

Q. '58, '59, and '60. Did you leave during the year 1960 to go to Memphis?

A. Yes, sir.

Q. Who do you live with in Memphis?

A. My mother and stepfather.

Q. You are not married?

A. No, sir.

Q. Now, Sterling, what is your age?
A. Eighteen.
Q. Eighteen?
A. Yes, sir.
Q. Now, Sterling, I recall the date of March 3, 1962, which was on a Saturday—I recall that date to you. What, if anything, on that date did you do?
A. I hitchhiked from my home in Memphis to here in Cleveland.
Q. What time did you leave your home in Memphis?
A. Around 2:30 or 3:00 o'clock in the afternoon.
Q. Where did you—you say you were hitchhiking?
A. Yes, sir.
Q. Where would you catch your first ride?
A. Where the highway begins by the train station.
Q. What train station is that, do you know?
A. I believe it's Union.
Q. Union?
A. Yes, sir.
[fol. 23] Q. And your first ride was from Memphis to where?
A. Memphis to that Big Star grocery up there at the Southgate Shopping Center.

Court: Can't you talk a little louder?
County Atty: Talk a little louder now, Sterling Lee, so everybody can hear you.

Q. Then I assume you caught another ride.
A. Yes, sir, I caught another ride with a man who was going to Walls, Mississippi.
Q. Walls, Mississippi?
A. Yes, sir.
Q. Do you know who that ride was with?
A. No, sir, I don't know the man's name, but he lives there in Walls.
Q. Was there only one person in the car with whom you caught a ride?
A. Yes, sir, it was a white man and he was going back home. His wife was in another car following us; they had just bought that car.
Q. Did he put you out at Walls, Mississippi?
A. Yes, sir.

Q. On what highway were you put out on at Walls?

A. Sixty-one.

Q. Did you catch another ride then from Walls?

A. Yes, sir, I did.

Q. Who did you catch a ride with that time, if you know?

A. Two sailors stationed at Millington Naval Base out of Memphis and they were on their way to Clarksdale.

Q. Did they carry you to Clarksdale, Mississippi?

A. Yes, sir.

Q. When you reached Clarksdale, where did they put you out on when you got to Clarksdale, Mississippi?

[fol. 24] A. On the northwest corner where whichway 49 crosses at 61.

Q. In other words, at the highway intersection of highway 61 and 49 in Clarksdale, is that correct?

A. Yes, sir.

Q. Sterling, I show you a photograph. What does that photograph represent—what does it show?

A. That's the intersection where highway 49 and 61 crosses.

Q. Where 'bout?

A. In Clarksdale.

(Photograph handed to counsel for defendant to examine.)

Q. Now, Sterling, come up here where the jury can see this picture also, here. Get around where they can all see it. Now, let's try to get this. We look at this intersection here—this is highway 61 going south toward the bridge and this is 49 coming across here—where did they put you out, if you know? Where did they put you out on the highway?

(County Attorney holds photograph for jury to see as witness points to places in answer to questions.)

A. On this corner here.

Q. On this corner back here, is that right? On the bottom of the picture?

A. Yes, sir.

Q. On getting out of the car the two sailors were in, in which you rode in, where did you go then?

A. Across the street over by the sign right here.

Q. This sign here which says, "61 and 1".

A. Yes, sir.

Q. What did you do when you reached this sign there?

A. I put my suitcase down and tried to thumb a ride.

Q. Did you ever at any time leave that sign post there.

A. Yes, I went to the gulf station to use the rest room.

[fol. 25] Q. Well, after using the restroom, what did you do then?

A. I went back and started hitchhiking again.

Q. Did you go back to the spot you were in before by the sign there?

A. Yes, sir.

Q. Did you at that time catch a ride?

A. Yes, I did.

Q. Approximately, do you recall, approximately after you left the restroom and went to this sign, approximately how long were you there at that sign before catching a ride?

A. Fifteen or twenty minutes.

Q. Fifteen or twenty minutes?

A. Yes, sir.

Q. And you say you caught a ride at that time, about fifteen or twenty minutes after that, is that correct?

A. That's correct.

Q. What kind of car did you catch a ride in?

A. A "Star Chief", black, red and black or red and brown interior—

County Atty: Speak up louder where they can hear you.

A. It was a "Star Chief", black with red and black, or either red and brown, upholstery.

Q. At the time that you caught this ride in this car, this black car, you say a "Star Chief", did you know what make it was at that time—when you caught the ride?

A. No, sir, I just remember seeing the "Star Chief".

Q. Have you later learned who puts out a "Star Chief"?

A. Pontiac.

Q. How many people were in this black "Star Chief" Pontiac when you flagged it?

[fol. 26] A. One.

Q. One person?

A. Yes, sir.

Q. Is that person now present in the courtroom?

A. Yes, sir.

Q. Would you point him out?

A. The man sitting at the table, there. (Indicates by pointing finger at defendant.)

Q. That is the man that was driving the "Star Chief" Pontiac, is that correct?

A. Yes, sir, that's right.

OFFERS IN EVIDENCE

County Atty: At this time, your Honor, we would like to introduce this picture into evidence as a State exhibit and would like for the jury to look at it too.

(Marked "State's Exhibit S-1" by the reporter.)

[fol. 27] (Witness returns to witness chair.)

Q. I show you another picture, Sterling; what does that depict?

A. That's the gulf station—I went to use the restroom.

Q. At what intersection is that?

A. Highway 49 and 61.

Q. Where 'bouts?

A. In Clarksdale.

County Atty: I would like to introduce this as an exhibit.

(Marked "State's Exhibit S-2" by the reporter.)

[fol. 28] Q. I show you another picture here; what does that depict?

A. The same crossing, 49 and 61 in Clarksdale.

County Atty: I would like to introduce this picture as an exhibit.

(Marked "State's Exhibit S-3" by the reporter.)

[fol. 29] Atty Carter: We can't hear the witness testifying?

County Atty: Sterling, you are going to have to talk up louder, now; you are going to have to talk loud so these people can hear you.

Q. Sterling, going back a little, I believe you said a while ago that you had flagged a ride in a "Star Chief" Pontiac, black, "Star Chief" Pontiac, with one man driving, is that correct?

A. That's correct.

Q. And I asked you at that time, "was the man driving that automobile present in the courtroom?" Is he present?

A. Yes, he is.

Q. Would you point him out?

A. Last man sitting there— (Indicated by pointing finger to defendant.)

Atty Carter: Now, I'm going to object—going to object any testimony in respect to any flagging a ride. This man, the defendant here, is charged with disorderly conduct. Under the law of the State of Mississippi, it is unlawful; it is a violation of the law of the State of Mississippi, Code section 8204, to hitchhike and under the law of the State of Mississippi, in misdemeanors there are no accessories that—an accessory becomes a principal. Any testimony; therefore, that, in respect to this defendant, that he picked up anyone in respect to hitchhiking is a violation of the law of the State of Mississippi, and since he is not charged with any such crime as that, that only with this crime here before us; disorderly conduct, we contend that to any evidence in its effect violates its right to due process of law and that any evidence on this subject of his violating the law which he is not charged is a violation of substance as well, and we move that all [fol. 30] evidence in respect to this be stricken from the record, and no testimony in that regard be permitted.

County Atty: Your Honor, this is part—this catching a ride is all part of the res gestae of this case and will be connected up and is a very vital part to showing the charge which this defendant is charged with, and I see no point where counsel can say or urge this court to strike this testimony because it is all a part of the case.

District Atty: May I say this—if hitchhiking is a misdemeanor, it's this man (pointing to witness on the stand)

and not this man (pointing to defendant) that has committed a misdemeanor.

County Atty: That's right.

District Atty: I see no reason two wrongs can make a right, therefore, I can't see why counsel objects to any testimony this man is permitted to make.

Atty Carter: Your Honor, that is not the point. The point is, that under the law which I have cited to your Honor, the law of the State of Mississippi, hitchhiking is a crime. If soliciting a ride in hitchhiking is a crime—

Court: A crime on the part of the one driving the car or the one being picked up?

Atty Carter: The law contends that anyone that solicits a ride, under the law of Mississippi, commits a crime and, therefore, anyone who picks him up necessarily has to be an accessory to this crime in terms of this and has to be violating the law, and since under the law of the State of Mississippi he would, therefore, be a principal and not an accessory because it is a misdemeanor, we contend that it was the State's duty and job, if they were going to charge this defendant, to charge him with violating that law as well, and having failed to do so, that they are not in a position to produce evidence to show that he [fol. 31] violated some other law, or without violating his rights to due process.

Court: Well, I think it is competent as part of the issues; he is not being charged with offering anybody a ride. You may proceed.

County Atty: At this time, your Honor, I would like the Court to show in the record that the defendant, I mean the witness, Sterling Lee Eilert, pointed to the defendant, Aaron Henry, when asked who was in the car.

Q. Now, Sterling, when you flagged the car, did it stop?

A. Yes, sir, it stopped.

Q. Did you then proceed to get into the car?

A. Yes, sir, I did.

Q. On getting into the car, did you have any conversation at all with the defendant?

A. Yes, we had some conversation.

Q. Well, did—

Court: He is still not talking loud enough.

County Atty: Sterling, you are going to have to talk loud so all these people can hear you. Talk loud as you can; all these people want to hear you.

Q. What was the first conversation, if any, did you have with the defendant on entering the car?

A. Well, we were going down highway 61 toward Cleveland, and he started talking about racial problems and segregation, and he was telling me that one white person was just like another to him and I said it was the same way with me. Then he told me he didn't hold anything against the white race, that if one white person did something to him that he just didn't particularly care for that one person and not the whole white race. I agreed with him.

Q. About how long did this conversation on race [fol. 32] relations last, do you know, approximately, while you were in the car?

A. The time I don't, but we were coming to—we were passing where Alligator is, and he said that he worked in Alligator at a liquor store and that he didn't have to be a work and he would go ahead and take me to Shelby, and then he cracked a joke saying, "that's pretty good, working in a liquor store and driving in Mississippi."

Q. Now, Sterling, while you were in this car, do you recall the color of the upholstery in the car?

A. It was red and brown, or red and black.

Q. Did you have any occasion to know anything else that might—peculiarity about this automobile while in it?

A. Yes, sir. I asked him if he minded if I smoke and he said "no". I didn't have any matches, so I went to push the cigarette lighter in and it didn't work and so I didn't have a light so I didn't smoke. I had pulled the ash tray out and I noticed that it had gum wrappers—it was filled up with gum wrappers.

Q. What kind of gum wrappers?

A. Dentyne and Juicy Fruit—I'm sure about the Dentyne.

Q. And what cigarette ash tray was that? Where was the ash tray located that the gum wrappers were in?

A. It was on my right side.

Q. In other words, on the right side of the car, is that right?

A. Yes, sir.

Q. All right now, you say that your conversation with the defendant, here, ended as to race relations around Alligator, Mississippi.

A. Yes, sir.

Q. Did you all have any other conversation on from Alligator?

[fol. 33] A. Yes, sir. He brought up the subject of sex.

Q. All right, tell the court what happened.

A. Well, he asked me if I had any girl friends, and I said, "I date sometimes, not very often." He said, "Do you ever get in any of their pants?" I said, "No." He said, "Come on, now," and I said, "No, I hadn't." He said, "Well, how do you get your sexual needs? Everybody has their sexual needs; how do you get yours—by getting a piece of ass," as he called it, "or masturbation?" I didn't say nothing. He said, "You seem like the shy type." I said, "What do you mean by that?" He said, "Well, do you have trouble getting dates with one girl more than once?" I said, "No, not often." He sorta laughed. We were coming into Shelby, and he reached over with his hand and grabbed the crouch of my pants, and I moved his hand and pushed it back and got over by the door and crossed my legs, and told him I wanted out of the car.

Q. Now, when he reached over and grabbed you in the crouch of the pants, did he touch your private parts?

A. Yes.

Q. He did?

A. Yes, sir.

Q. And was that when you slid over by the door?

A. Yes, sir.

Q. You removed his hand?

A. Yes, I did.

Q. And you say you crossed your legs?

A. Yes, sir.

Q. About where were you at that time when that happened?

A. We were passing "7-11" service station coming into Shelby.

Q. And I believe you stated at that time you asked to be let out of the car; is that correct?

[fol. 34] A. Yes, sir.

Q. Did he stop the car and let you out?

A. Yes, sir, he did.

Q. On getting out of the car, what did you do?

A. I got my suitcase out of the back, and when he drove off, I looked down at his license number.

Q. Did you take his license number?

A. Yes, sir.

Q. What was that number?

A. 1769.

Q. Is that all the number you saw on that car?

A. Yes. When I was in the police station, they asked if I remembered any other numbers, and I told them I didn't; I didn't see any more because there was a red deflector that—

Q. All right, after having gotten out of the car and gotten these four numbers of the license tag, what did you then do?

A. I went across the street to the bus station there in Shelby and asked the number of the local police station, and I called the station and no one answered, so I started walking a block down to the station, where I had seen it before when I had passed through Shelby. When I got there, no one was there and I started to make a phone call at the pay-phone outside to Cleveland, and the sheriff and deputy from Clarksdale drove up, and I told them what had happened and gave them the license number of the car and description, and we went inside the police station.

Q. All right now, Sterling, you had reported this, as I understand it, to the police at Shelby, Mississippi—this incident, is that correct?

A. Yes, sir.

Q. Now, on reporting it, and I believe you did state that [fol. 35] you gave them the four figures that you had taken down?

A. Yes, sir.

Q. Did they—what did they do, if anything?

A. They radioed Clarksdale to find out the number.

Atty Sandifer: Objection, to the effect it is not binding on the defendant on what these officers did. All this is pure hearsay as far as this defendant is concerned.

Court: I did not understand; make your objection again.

Atty Sandifer: The question is, "What, if anything, did these officers do?" I am saying at this point this is all hearsay if it was not done in the presence of this defendant. It is certainly not binding on the defendant.

Court: Sustain the objection.

Q. Sterling Lee, after having reported this to the Shelby police, did you return to Clarksdale, Mississippi?

A. Yes, sir. The deputy that was with the sheriff from Shelby, I rode back with him to the Clarksdale police station.

Q. And you went to the Clarksdale police station; is that correct?

A. Yes, sir.

Q. When you got to Clarksdale police station, at that time did you see the defendant?

A. Not immediately. It was about forty-five minutes, I guess, and I was sitting right inside the door when they brought him in.

Q. Did you identify him yourself.

A. Yes, sir. One of the officers was sitting nearby, and when they brought him in, I nodded my head that it was him.

[fol. 36] Q. In other words, you volunteered that information, is that right?

A. Yes, I recognized him right off.

Q. Had you ever seen this defendant before?

A. No, sir.

Q. Had you ever known anything about this defendant before you had caught this ride with him?

A. No, sir, I never had.

Q. After having first identified the defendant, did you later identify him again?

A. Yes, I later identified him face to face when they brought him in the room where I was.

Atty Carter: What was that testimony, please?

A. They brought him in the room where the Clarksdale chief of police, Mr. Pearson, and some more gentlemen were, and I identified him.

Q. That was the second time you had identified him?

A. That's correct.

Q. The first time was when he was first brought into the police station and you nodded your head to the police officer, is that correct?

A. Yes, sir.

Q. Now, Sterling, what was your purpose of coming to Cleveland, Mississippi, on that particular day?

Atty Sandifer: We object.

Court: I sustain the objection.

County Atty: In other words, you can't show why he was coming to Cleveland?

Court: I sustain the objection.

Q. While you were there in the police station in Clarksdale—just a minute. Now, Sterling, getting back to when [fol. 37] you got out of the defendant's car in Shelby, Mississippi. When you took that license number was there anything obstructing your view to any part of that number?

A. Yes, sir, there was a red deflector disk right where the number started.

Q. Then the disk did that obscure your view to any number to the left of that license number?

Atty Carter: I object, your Honor; he is leading the witness.

Court: Don't lead the witness.

Q. Did this disk obscure your view to any numbers?

A. I couldn't see anything in front of the numbers I took down.

Q. What did the defendant do after you got out?

A. He went on down the highway, and I went inside to make a phone call, and I didn't see him again until I saw him come back to the red light and turning to the left going back toward Clarksdale.

Q. That was when you were in the bus station or out of the bus station?

A. I had tried to get a hold to the police station and no one answered, and I was walking down to the police station and I saw him.

Q. You saw him driving back toward Clarksdale?

A. Yes, sir.

Q. Now, Sterling, let's get back to this proposition. When you were in the car with the defendant and he reached over and grabbed you in the crouch of the pants and touched your private parts and you slid over to the door, what, if anything, did the defendant say to you at that time for sliding over to the door?

A. Oh, he said "you aren't scared are you?" I told him [fol. 38] that I wanted out of the car.

Q. Did he say anything else to you?

A. Oh, he said "you aren't afraid of getting up a hard are you?" I said "that's the least thing I'm scared of right now." I told him I wanted out.

County Atty: No further questions.

Cross examination.

By Atty Robert J. Carter:

Q. When were you—what's the date of your birth?

A. August 3, 1943.

Q. Where were you born?

A. Memphis, Tennessee.

Q. According to my figures, you are now nineteen years old, is that correct?

A. No, sir, I want to nineteen until August.

Q. Now, I understand from your testimony that you live in Memphis at the present time.

A. That's correct.

Q. With your mother and stepfather?

A. That's right.

Q. Is that correct?

A. That's right.

Q. Do you have any brothers and sisters?

A. I have a sister.

Q. Is she older than you, or younger?

A. Older.

Q. When you came to Cleveland, Mississippi—when was that?

A. March 3.

Q. Now you spent some time in Mississippi.

A. When I lived in Mississippi?

[fol. 39] Q. Yes.

A. That was when I was fourteen, fifteen—thirteen, fourteen and fifteen.

Q. Did your whole family move down here?

A. My sister is married and has her own family, and it was just my mother and I, and we came down here: she was married to Mr. Joe Wilson who lives here.

Q. In Cleveland?

A. Yes, sir.

Q. Now, were you in school in Cleveland?

A. Yes, I was.

Q. What school?

A. Cleveland Junior High.

Q. Did you finish?

A. School, here?

Q. Did you finish Junior High School, here?

A. No, I didn't. I finished in Memphis.

Q. Finished Junior High School in Memphis?

A. Yes, sir.

Q. Did you go to high school?

A. Yes, I went to high school.

Q. Did you graduate from high school?

A. No.

Q. How far did you go?

A. Tenth grade.

Q. Tenth grade?

A. Yes, sir.

Q. When did you finish the tenth grade?

A. Didn't finish: I quit before it was over.

Q. How long ago was that?

A. Two months after the school year began this year.

[fol. 40] Q. This year?

A. Yes, sir.

Q. Have you been working during that period of time?

A. Yes, I've been working.

Q. Have you had a constant job, or on-and-off?

A. I hadn't been out of school that long; I've been working for McCord Construction Company pretty regular, but I'm laid off right now.

Q. Were you working on March 3?

A. No, I was hitchhiking to Cleveland.

Q. Were you in school on March 3, or had you quit school before March 3, 1962?

A. I had quit school before March 3.

Q. As I understand, you were in the tenth grade this present school year, 1961-62 school year?

A. That's right.

Q. And at that point you had passed eighteen years of age, is that correct?

A. That's right.

Q. Let me ask you this; did you do well in school?

A. When I quit, I was passing the majority of the subjects.

Q. What time of day did you start this trip to Cleveland?

A. I started in preparation early that morning.

Q. What time?

A. Around 10:00 o'clock.

Q. Did you get up before 10:00, or you got up at 10:00?

A. I got up around 10:00; I cleaned up; I got my suitcase packed; I ate lunch; I went down to the Rosemary theater—

Q. You ate lunch at 10:00 o'clock?

A. I said I got up at 10:00 o'clock and made preparations for packing my suitcase; I ate lunch; I got cleaned up; [fol. 41] Then I went down to the Rosemary theater where I had worked one week and picked up a check they owed me.

Q. Did you cash the check?

A. I cashed the check.

Q. So that you had money in your pocket when you started on your trip?

A. Yes, I did.

Q. How much money did you have?

A. I had about nine dollars.

Q. Nine dollars. You picked up a check, I understand, at a place that you worked.

A. Yes, I worked up there at a special show that they had.

Q. Sorry, I can't understand what you—what's the name of the place again?

A. Rosemary theater.

Court: Try to talk louder.

A. Rosemary theater.

Q. Is that a movie house?

A. Yes.

Q. Now, is that the only job you've had?

A. No.

Q. This year, since you quit school?

A. No, sir.

Q. How many other jobs have you had?

A. I worked at Carlton cafeteria on Madison for about two weeks and it was too long of hours and little pay, so I quit and helped out at the show and then started with McCord Construction.

Q. Did you ever work as a dishwasher or bus boy anywhere?

A. That's what I was when I was working at the Carlton cafeteria; I washed dishes—cleaned up.

[fol. 42] Q. Weren't you laid off from that job on March 3?

A. At Carlton?

Q. Yes.

A. No, I quit that job two weeks previous to that.

Q. Now we've got you—your bag is packed, now what did you do? You cashed a check; your bag is packed; you've got nine dollars in your pocket; now, what did you do?

A. I went home and got my bag. Went back home and got my bag.

Q. Back home and got your bag. Then what did you do?

A. I caught a bus that took me up town, down main street, and back down by the train station where I started hitchhiking.

Q. How much did the bus ride cost?

A. About sixteen cents.

Q. What time of day did you leave to catch the bus?

A. It was around 1:30, maybe 2:00.

Q. 1:30 or 2:00. What time did you get to the train station?

A. A little after 2:00.

Q. At the train station that you flagged your first ride?

A. That's right.

Q. How long did you have to wait before you got that ride?

A. About ten or fifteen minutes, maybe twenty.

Q. Ten or fifteen minutes? That's about 2:45.

A. I couldn't say; I didn't have a watch.

Q. I understand your testimony that you arrived at the bus station—railroad station about 2:30.

A. About, I don't know exactly.

Q. You would say about 2:45.

A. I'm not trying to pin-point any exact time, because I can't; I'm trying to tell you around what time.

[fol. 43] Q. Well, would it have been after 3:00, that you caught your first ride?

A. No, I don't believe it would have been after 3:00.

Q. Do you think it was before 3:00, about 2:45, after 2:30?

A. I really can't say; I didn't have a watch.

Q. Now, your first ride came along and how far did it take you?

A. Southgate Shopping Center on highway 61.

Q. Do you have an idea how far that is outside Memphis?

A. It's inside the city limits.

Q. That's inside the city limits?

A. Yes.

Q. How long did that take, do you estimate, from the time you got in the car until you got out?

A. Not long.

Q. Five minutes?

A. I don't know.

Q. More than ten?

A. I never thought about the time.

Q. Never thought about the time.

A. No

Q. How long were you at the Southgate Shopping Center before you caught your next ride?

A. Not too long; I didn't know what time it was—it wasn't very long.

Q. Well, would you say you caught your second ride before 3:00 or after 3:00?

A. I don't believe it was too much after 3:00, if it was. If it was, it wouldn't be much before 3:00.

Q. What kind of car was this first ride you got in?

A. Old chevrolet, about '54, I guess.

[fol. 44] Q. Two-door car, four-door car?

A. Yes, it was a two-door.

Q. What kind of upholstery did it have?

A. Ragged.

Q. Ragged upholstery?

A. Yes.

Q. What color?

A. I don't remember.

Q. You don't remember. Now, sometime either a little before 3:00 or a little after 3:00 we are at Southgate Shopping Center.

A. I was.

Q. You were at Southgate Shopping Center. All right, you caught another ride.

A. Yes, I did.

Q. Where did that take you?

A. To Walls, Mississippi.

Q. To Walls?

A. Yes.

Q. What is the distance from Southgate Shopping Center to Walls, Mississippi?

A. Five or eight miles.

Q. Five miles.

A. I'm not sure.

Q. You were in the car only a short time?

A. I guess so, I didn't keep track of the time.

Q. You didn't keep track of the time. Do you think you were in that car for five minutes?

A. Oh, it was longer than five minutes.

Q. Ten minutes? Half an hour?

A. I didn't keep up with it that long, but I know I was in longer than five minutes.

[fol. 45] Q. How many people were in that car?
A. One.
Q. Man or woman?
A. Man.
Q. What kind of car was that?
A. I believe it was a '58 chevy.
Q. '58 chevy. What kind of upholstery did it have?
A. I don't remember.
Q. Now, at Walls you—how long did you wait at Walls?
A. Not very long.
Q. Five minutes, ten minutes, two minutes?
A. Might have been a little longer than ten minutes.
A. A little longer than ten?
A. Yes.
Q. Then I understand your testimony, you got a ride from Walls to Clarksdale.
A. That's right.
Q. How far is the distance from Walls to Clarksdale?
A. I don't know.
Q. You don't know?
A. No.
Q. How long to your estimate you were in that car?
A. Couldn't say, exactly.
Q. Do you think it was half-hour? Fifteen minutes?
A. I know you couldn't drive from Walls to Clarksdale in half an hour.
Q. Well, you are more familiar with this than I am; I'm trying to find out.
A. Well, I would be glad to help you, but I don't remember exactly how many minutes or how many hours I was in the car.
[fol. 46] Q. Do you have an idea how far it is? Fifty miles?
A. I never bothered to measure. I believe Clarksdale is about eighty miles from Memphis, but I wouldn't swear to it because I'm not sure.
Q. Now, do you recall what kind of car that picked you up at Walls?
A. Chevrolet.
Q. Chevrolet? What year?
A. I believe it was about '59 or '60, I'm not sure.

Q. The people that were driving chevrolets, that part of your journey, were partial to you, weren't they?

A. Yes.

Q. You were picked up by chevrolets all through the trip, is that right?

A. Well, I'm not choosy, when I'm hitchhiking.

Q. Who was in that car?

A. Two sailors that are stationed at Millington Air Base.

Q. You got their names while you were talking to them?

A. No, I didn't quite get their names. We were talking, and they were going to Clarksdale to see one of the boy's girl friends.

Q. One what?

A. One of the boys had a girl friend in Clarksdale, and they were on their way to see her.

Q. Now, what kind of car did they have? A two-door car?

A. Two-door chevrolet.

Q. Did the three of you sit on the front together?

A. No, I sat in the back.

Q. Five passenger, two-door car?

A. No, it was just three of us.

Q. Can the car hold five people, or four people, or how many?

[fol. 47] A. I have seen smaller cars than that get ten people in it. I don't know the capacity of the car.

Q. Well, was there a sitting capacity in the car for four people, five people, two people, or what?

A. Do you mean did they have regular seats or bucket seats in the car?

Q. Was it a sedan; a coupe?

A. It was a two-door, hard-top, Chevrolet, either a '59 or '60, and there was a front seat and a back seat, and I guess six people could get in it.

Q. Now, what time of day were you let out at Clarksdale at the junction?

A. About 5:00 o'clock.

Q. How long did you wait for—before you were picked up?

A. I imagine about half hour.

Q. Picked up about 5:30?

A. I couldn't be sure because I didn't notice what time it was.

Q. It is your testimony that about 5:30 the defendant picked you up and you got into his car?

A. That's right.

Q. What is the first thing he said to you when you got in the car?

A. "Put your suitcase in the back."

Q. What did he say to you?

A. "Put your suitcase in the back."

Q. What did you say to him.

A. "All right."

Q. What was the next point in your conversation?

A. He asked me where I was going and I told him I was going to Cleveland.

[fol. 48] Q. Was he driving fast?

A. No, he was going around 45, I guess.

Q. About 45 miles an hour, in your estimation?

A. At one time I looked at the speedometer and it registered 45.

Q. You looked at the speedometer?

A. At one time, yes, sir.

Q. Was that immediately after you got in or later?

A. It was a little later.

Q. Where was that?

A. On the highway.

Q. Was that near Shelby, or close to Clarksdale?

A. Around Alligator.

Q. Around Alligator?

A. Either before we got there or after we passed it.

Q. Now, after you were asked where you were going and you said you were going to Cleveland and started out, now, when was this—was the next conversation the conversation about race relations?

A. Yes.

Q. Now, when did this conversation start?

A. Little outside Clarksdale.

Q. Just shortly outside of Clarksdale. It came very soon after the "get in and put your suitcase in the back" and "where are you going?" Shortly after that you commenced the conversation about race relations?

A. Yes, a little while after that.

Q. Now, what was said by you and what was said by him during the course of that conversation?

A. Well, he was saying he didn't see any reason why the white and negro races couldn't live together peacefully. [fol. 49] Q. Did you join in the conversation?

A. I didn't have anything else to do.

Q. Did you join in the conversation?

A. Yes, I did.

Q. What did you say?

A. I said, "I guess so, I never thought about it that way." I told him I believed in treating negroes all right as long as they don't bother me. I said if a negro bothered me, I didn't hold it against the whole colored race, I just held it against the one person. He said all white persons looked just like another to him; the same way I am about colored people.

Q. Now, if I understand, that conversation continued along in that vein until between Clarksdale and Alligator, is that correct?

A. That's right.

Q. How far is that?

A. I never counted the miles.

Q. How far would you estimate it to be?

A. I couldn't estimate it because I don't have any idea.

Q. How long did it take you; how long did that conversation take?

A. I don't know; we talked about that and talked about a negro maid I used to have when I was little.

Q. Talked about what?

A. A negro maid we used to have when I was a little boy.

Q. What did you say about her?

A. Well, he was telling me about how there are good negroes and good white people and bad in each race, and

I told him about the negro maid that had been real good to me.

Q. I didn't hear you.

[fol. 50] A. I was telling him about this maid we had that had been real good to me.

Q. So the conversation is going beyond Alligator?

A. No.

Q. We are still between Clarksdale and Alligator?

A. Yes.

Q. Now, after the race relations conversation, what happened next? The race relations conversation ended at Alligator.

A. Well—

Q. Is that correct, did it end at Alligator or go beyond Alligator?

A. We weren't quite to Alligator when it ended. We were close to Alligator and I asked him if he minded if I lit a cigarette and smoked and he said "no, he didn't mind." I didn't have any matches so I reached and pushed in the cigarette lighter and when it popped back it didn't work so I didn't smoke. I had pulled the ash tray out and saw some gum wrappers and he laughed and said, "My wife likes to chew a lot of gum."

Q. How many ash trays were on the car?

A. Well, there was one out. I imagine there was two ash trays; I only saw the one.

Q. Didn't ask you to imagine; I want to know what you saw.

A. One ash tray, the one that had the gum wrappers that was on my side.

Q. How far on your side was it?

A. I didn't bother to measure it.

Q. Was it close to the door?

A. No.

Q. Or was it close toward the inside?

A. It was further from the inside of the door.

[fol. 51] Q. It wasn't right on the edge of the door of the car?

A. I don't believe it was.

Q. You didn't have any matches?

A. No, I didn't.

Q. Now, as I understand it, you tried the cigarette lighter and found that it wouldn't work and then you opened the ash tray—

A. No, I had already opened the ash tray and had reached over to push the cigarette lighter in.

Q. What hand did you use to push the cigarette lighter in?

A. My left hand.

Q. What hand did you use to open the ash tray?

A. My left hand.

Q. Both, left hand?

A. I take that back. I remember that I had pushed in the cigarette lighter and I was looking for the ash tray, but I couldn't find it on the dash board, and he reached over with his right hand and pushed out the ash tray.

Q. Oh, you didn't open the cigarette lighter, he did?

A. I pushed in the cigarette lighter and I went to pull out the ash tray, but I couldn't find it, so he reached over and flipped it open.

Q. He reached over and pulled out the ash tray?

A. Yes.

Q. Did he have to lean way across you?

A. It was about at my left.

Q. Where you were sitting—the point you were sitting in the car—he leaned across and opened an ash tray which was to your left, is that your testimony?

A. It was in there somewhere.

Q. Was it in front of you, to your left or to your right? [fol. 52] A. It was on the dash board in front of me, I imagine.

Q. You have been very exact with respect to some of your testimony. Now, let's see about this ash tray. You saw the dentyne wrappers and you remember that very well.

A. Yes, I saw them.

Q. Now, where was the ash tray?

A. On the dash board.

Q. To your left; to your right; right in front of you; did he lean in front of you?

A. No, he just reached over and flipped the ash tray open.

Q. Was it the kind of ash tray that you push in or pull out?

A. You push in at the bottom.

Q. You push in at the bottom?

A. Yes.

Q. Was he to your left from where you were sitting?

A. Yes, he was on my left.

Q. Were you huddled up against the door, or were you sitting closer inside?

A. Well, I had my arm on the arm rest of the door, and I was sitting there talking and watching the cars go by; just making myself comfortable.

Q. What took place next? We have the defendant leaning across you pushing open the ash tray.

A. Oh, then we found out the cigarette lighter didn't work and he said he would have to get that fixed, so I just didn't smoke. About that time we came into Alligator.

Q. Then what happened?

A. Well, he said that he worked in a liquor store in Alligator and he didn't have to be at work for a while so he would go ahead and drop me off at Shelby and I thanked him.

Q. He agreed to take you beyond where he was—

[fol. 53] A. He offered to take me on to Shelby.

Q. He offered to take you on to Shelby?

A. Yes.

Q. Then what happened?

A. He cracked a joke about working in a liquor store and driving in Mississippi and I didn't catch on at first and we went on down the road—

Q. I'm afraid I don't either. Go ahead.

A. Want me to explain it to you?

Q. No, that's all right.

A. So, then he brought up the subject of my girl friends. I told him I dated some time. He started bringing up the subject of sex.

Q. What happened?

A. You mean, what did he say?

Q. What did you say? He asked you about girls and you said you dated sometimes.

A. Yes.

Q. Then he brought up the question of sex.

A. Oh, he asked me if I had ever been in any girl's pants.

Q. What did you tell him?

A. I told him "no".

Q. You told him, "no", and then what?

A. He laughed.

Q. Had you ever been in any conversation such as that before?

A. Maybe with some of my friends in my age group, but not a stranger.

Q. Then what happened? Did you manifest to him shock and surprise at the language that he used?

A. Well, it wasn't what I expected to hear.

[fol. 54] Q. But did you manifest shock and surprise to him?

A. Well, I didn't say it, I just looked at him kinda funny.

Q. But you didn't say anything?

A. I didn't say anything else, then he started the conversation again.

Q. He said, "You look like you are the bashful type." I said, "What do you mean by that?" He asked if I had trouble getting dates with one girl more than once and I said, "Not normally," and he said, "You mean you never had a piece before?" I said, "No, I never had."

Q. When did this conversation take place; where were you when this conversation took place?

A. We were coming near Shelby.

Q. Coming near Shelby when this conversation took place.

A. It was at the "7-11" service station on "61" outside Shelby.

Q. Was that the time you looked up and noticed that he was driving at forty-five miles an hour?

A. No, I believe we were passing through Alligator.

Q. That you noticed that he was driving forty-five miles an hour?

A. Yes, I guess so; I was looking at the dashboard.

Q. Did he seem to be driving any faster or any slower when you were having this conversation about your sex life?

A. Say that again.

Q. When you were having this conversation about your sex life, was he driving any faster or any slower than forty-five?

A. I didn't notice.

Q. Now, you are coming into Shelby at this point.

[fol. 55] A. Yes.

Q. Then what happened?

A. He said, "How do you get your sexual needs fulfilled? Everyone has their sexual needs; by getting some or by masturbation?" I didn't say nothing.

Q. You still haven't said anything.

A. No, I didn't say a thing. Then he reached over and grabbed my pants and touched my private parts, and I moved his arm—his hand—and told him to let me out of the car.

Q. And he let you out of the car?

A. Yes.

Q. Now when he reached over to you and touched you, what other part of you did he touch other than your private parts?

A. He brushed inside my leg.

Q. And at that point, where were you sitting? Were you sitting in the same position that you were since entering the car?

A. Well, I was sitting straight ahead. I still had my arm on the arm rest and my left arm propped on the back of the seat.

Q. Were you sitting near the door? Was there some distance between you two?

A. I was leaning against the door with my shoulder.

Q. You had been sitting this way from the moment you got into the car?

A. Yea, I might have switched around a little bit—

Q. You weren't huddled up against him at any point were you?

A. Heck, no. The reason I remember that particular position I was in is because I don't believe I will ever forget that particular incident that happened at that time.

[fol. 56] Q. You were against the door when he touched you. You got out of the car and got your—where were you, at Shelby?

A. We were just this side of the bus station.
Q. Were you passed where the railroad station is?
A. No.
Q. You weren't passed that?
A. No.
Q. What time was it?
A. I don't know. Getting pretty late, starting to get dark. I didn't know exactly what time it was until I was at the Shelby Police Station, and it was about ten mi..utes. It was about 6:00 o'clock.
Q. When you were at the Shelby Police Station?
A. Yes, I remember—
Q. Was this when you walked down to the station?
A. That was when I was inside the station making the complaint against him.
Q. That was after you had seen the police?
A. Yes.
Q. Now, you got out of the car in Shelby; you went to the bus station; you took his license number—
A. I took his license number then I walked across the street.
Q. Walked across the street; no answer at the station, I understand your testimony to be.
A. No, no one answered.
Q. And then you walked down to the police station and no one was there, is that correct?
A. No one was there at the time—
Q. How long did you wait before someone showed up?
[fol. 57] Q. Wasn't more than two minutes, because I was just starting to make a phone call to Cleveland and they drove up.
Q. How long did it take you—how much time elapsed from the time you got out of the car until the time you got to the police station?
A. Not too long; not over five minutes.
Q. Now, what did you put the license number on that you took down; on a piece of paper?
A. No, I just saw the four big numbers "1769".
Q. And you remembered it?
A. Yes, I remembered it. I remembered it just like a date, "1769."

Q. What time elapsed from the time you got out of the car when you saw the license number and the time you walked to the police station?

A. I'm not sure, not too long.

Q. What's your estimate?

A. Well, my estimate is between five and ten minutes.

Q. Five and ten minutes. You walked up to the police station and you waited about two minutes and someone came by. Who was that?

A. They didn't come by; they pulled up to the station. It was the Sheriff of Shelby and Deputy from Clarksdale was with him.

Q. Do you know the names of these two men?

A. The Shelby officer is named "Manuel", and I don't think I remember the other officer's name.

Q. Then I understand—am I correct that you went inside the police station?

A. I went inside with them.

Q. And at that time you looked at the clock?

[fol. 58] A. No, I didn't look at the clock.

Q. When were you—at what point when you were in the police station at Shelby did you look at the clock and notice the time that you testified to?

A. Oh, I never did look at the clock.

Q. You never did look at the clock?

A. No.

Q. Well, then, the testimony that you gave that you noticed the time when you went into the police station, you want to change that?

A. I said I noticed the time. I noticed the time, but not looking at the clock.

Q. How did you notice the time?

A. Well, I had made the complaint, and they were making out some papers and someone had said what time they called them over the radio.

Q. You got the time from the police officers?

A. Yes, from their conversation.

Q. Now what did you tell the police?

A. I told them what had happened and gave them the license number of the car and a description of him.

Q. How did you describe him?

A. Well, I said, "He was a negro man about 5′ 10″, heavy set, short hair, well dressed, and from the way he talked seemed like he was an educated negro."

Q. If I understand you—I can't really hear what you are saying too well—if what I understand you to be saying, you are using the term "nigger".

A. You asked me what I said, didn't you?

Q. You told the police he was an educated negro?

A. In my exact words I said, "he seemed to be an [fol. 59] educated negro from the way he talked."

Q. You talked to Mr. Manuel and this police officer from Clarksdale? You told the story to those two officers?

A. Yes, I did.

Q. While you were talking, what were they doing?

A. They were rushing around trying to find some papers, and I told them I wanted to sign a warrant for arrest, and so I signed my name to the warrant—

Q. You signed your name to a warrant?

A. Well, I signed something saying what the charges were.

Q. You signed something saying what the charges were?

A. I believe it was a warrant; I'm not sure.

Q. You sign anything else?

A. I don't believe so.

Q. You told your story to the police orally. Did they take it down?

A. Not at that time.

Q. Not at that time; not in Shelby?

A. Not in Shelby.

Q. Now, you described the defendant to them in terms that you indicated before and you described the car. What did you say about the car?

A. I said that I wasn't sure what make it was, but I knew it was a "Star Chief", and that it was black with red and black, or red and brown interior, and the license number was "1769". They said, "Were there any little numbers and letters by it?" I said, "I didn't see any, and it had a red deflector by it on the back by the license plate, I remember that."

Q. Did you describe it as a two-door car, or a four-door car, or what?

A. I don't remember if I said if it was a two-door or [fol. 60] four-door, but it is a four-door car.

Q. Four-door car. Do you know what year it is?

A. I don't know; it looked new.

Q. How long were you in the police station in Shelby?

A. About twenty or twenty-five minutes.

Q. Then where were you taken?

A. The officer from Clarksdale had his car there, and I rode back to Clarksdale with him to the police department there.

Q. You went to Clarksdale?

A. Yes, sir.

Q. While you were in Clarksdale, did you repeat your story to any of the officers in Clarksdale?

A. Yes. They asked me to repeat it and I did, and they took it down over a tape recorder.

Q. Took it down on a tape recorder in Clarksdale?

A. Yes.

Q. Did you sign anything in Clarksdale?

A. I don't remember.

Q. When was the next time you saw the defendant?

A. About thirty or forty-five minutes after I got to Clarksdale.

Q. And you saw him in the police station?

A. Yes. I was sitting on a bench by the door and the officers brought him past, and I looked up and saw him and nodded my head to another officer that was sitting nearby that he was the one.

Q. Was there anyone with him when they brought him past?

A. No.

Q. He was alone?

A. Just the officers.

Q. When did you see him again?

[fol. 61] A. About, I guess, half-hour or forty-five minutes later; I'm not quite sure. It was a little later that same evening.

Q. You were still in Clarksdale or back in—

A. I was in Clarksdale. They brought him into the room that I was in with Mr. Pearson and the Chief of Police and some more gentlemen, and I identified him face-to-face, and they told him what he was charged with.

Q. Was he alone when you identified him?

A. Yes.

Q. When you identified him face-to-face, was he the only negro in the room at the time?

A. Yes.

Q. When the defendant came into—when you identified him, did you notice what he was wearing?

A. When I identified him in the room? Yes, he had some dark colored slacks on and a gold sweater, long sleeve with buttons, light colored shirt—I believe it was a white shirt.

Q. Do you remember a tie?

A. No, I don't remember a tie. I don't believe he was wearing a tie; he had his collar open.

Q. Was he dressed any differently at the time you identified him and when he picked you up in the car?

A. No, I don't believe so.

Q. You don't believe so. Did you in your statement to the officers—did you tell them about this sweater, black slacks, etc., when you described him?

A. Well, I don't remember saying anything about black slacks. I said that I thought he had a sport coat on or a sweater.

Q. Sport coat or a sweater?

A. Yes.

[fol. 62] Q. Did you make any other statement to any other police officer?

A. About what?

Q. About this case.

A. Not that I can think of.

Atty Carter: Your Honor, we would like to have produced, and we would like to suspend further examination of this witness. We would like to have produced every document, every paper, every statement that is on the recording machine that this witness made to the police.

District Atty: We grant that.

Court: Well, you didn't understand what he said, did you?

District Atty: He said "recording machine". The State doesn't object to it. In fact, we would like to introduce it. We hate to delay the trial, your Honor, but it is available.

Court: The State says they will produce the testimony if you want it. We will take a recess for twenty minutes.

(Short recess.)

(Jury takes box again.)

REQUEST TO PRODUCE RECORDS AND OFFER IN EVIDENCE THEREOF

Atty Carter: We have heard the transcript recording of the testimony of this witness, and we are requesting the Court to impound the machine on which that is had and have it produced as evidence. We want that machine impounded.

Court: What about that Mr. District Attorney?

County Atty: Your Honor, this machine and tape recorder does not belong to us.

Atty Carter: It is in this Court; it is in this courtroom. [fol. 63] County Atty: And never has been introduced as evidence. The State never has introduced it; it never has been introduced into evidence.

Court: You volunteered. You made it available to him.

County Atty: We made it available to him to listen to. Is he going to introduce it into evidence? Is he going to introduce the statement as a whole into evidence along with the machine and everything?

Court: I think he has a right to have the machine kept here until the trial is over.

County Atty: We have no objection to keeping it here as long as the trial is over with. The machine belongs to Mr. Pearson, I mean, it is in his custody. I believe, Mr. Pearson, it belongs to someone else, doesn't it?

Mr. Pearson: The machine belongs to Office Supply Company; the tape belongs to me. It is my personal, private tape. Frank Wynne and Hoke Stone don't have a thing in the world to do with my tape. I told them I would

let them listen to it, because I wanted to expedite this court hearing, etc.

Court: The Court will instruct you to keep this machine and tape available for Court until this trial is over.

Atty Carter: Your Honor, we think that this machine—this testimony—is important. The question of holding the machine and keeping the machine in possession creates a problem, and we request the Court have the testimony taken down so that it can be available. We think that this machine—at the present time, we are requesting it to be in the custody of the Court, not in custody of anyone else.

Court: It is not the Court's duty to take anything down, but you can do that if you want to yourself. The tape and [fol. 64] machine are voluntarily made available to you; if you want to get someone to take it down, that's your business.

Atty Carter: And we wish to offer the recording in evidence.

Court: I don't know what it is or what bearing it has so the motion is overruled.

Atty Carter: It is the complaining witness' statement, and as such, we think it necessarily relates to this incident and is relevant.

Court: Motion is overruled.

Atty Brown: Your Honor, I believe the attorneys for the State indicated when we first talked about this recording they were willing for it to be admitted into evidence.

Court: We can't do that yet. They voluntarily made it available, and there is nothing to be introduced. You can't introduce the machine.

Atty Carter: I want to offer this statement in evidence. I think we are entitled to having it offered in evidence, your Honor.

Court: It is not proper before the Court at this time. If you want to have it taken down, then we will take it up and offer it in written form, and then we will have something to go on, but as it is, there is nothing to be offered.

Atty Carter: We have a machine with a tape recording on it, your Honor, and we are asking the Court to impound the machine and to offer it into evidence, whichever the Court directs.

County Atty: We have no objection to introducing the tape of this witness, provided, if the Court—we want to know this: If the Court is going to let this testimony come [fol. 65] in from this witness here, that all statements on that recording goes in along with it.

Court: I haven't ruled on any evidence whatever. You all, when they said they wanted all the tape, all the testimony of the witness, you said let them have it all; let them listen to it. They have the right to have that taken down if they want to. The State doesn't have to have it transcribed for them. If they want to take it down, they can do that, and then after they have taken it down and they want to offer it in evidence at that time, we will pass on whether it is competent or not.

District Atty: I believe they have asked that it be put in evidence right now.

Court: We can't introduce a tape recording in evidence. My ruling is that it will have to be typewritten in order to determine whether it is admissible or not. That is the ruling of the Court. Proceed with the examination.

Atty Carter: Your Honor, we will attempt to have the statement taken down. We would like to again request the Court to take custody of the machine until we have had an opportunity to secure the services of a reporter or secretary to take the statement down.

Court: I direct Mr. Pearson to make this machine available to the Court until this trial is over.

Atty Carter: Resuming the examination— Do I understand your testimony to be that you signed a statement or warrant in Shelby?

A. Yes, I did.

Q. When was this statement signed?

A. March 3rd.

Q. Shortly after you went to the police in Shelby?

A. Yes.

[fol. 66] Q. When your statement was taken down in Clarksdale on the machine, the recording machine, was this statement made before or after you identified the defendant?

A. As I said earlier, he was brought in and I identified him as he passed by me then the recording was made.

Q. The recording was made after that.

A. And then I identified him face-to-face.

Q. Who was present when the recording was made?

A. Mr. Pearson and, I believe, the Chief of Police from Clarksdale, and some other officers.

Q. Who questioned you when the recording was taken?

A. Mr. Pearson.

Q. Mr. Pearson?

A. Yes.

Q. Did you have any difficulty in identifying the defendant? Were you positive, certain, that this was the man?

A. I was positive when I identified him in Clarksdale; I'm positive now.

District Atty: What was that, now?

A. I'm positive that he was the one that picked me up, just as positive then as I am now.

Q. Who suggested to you that this was a Pontiac car?

A. No one.

Q. No one?

A. They just told me that a "Star Chief" was made by Pontiac.

Q. Mr. Pearson didn't suggest to you that this was a Pontiac car?

A. He might have told me it was a Pontiac.

Q. Did he ask you, "Was it a Pontiac car?"

A. I'm not sure; I don't remember.

Q. How did you state the defendant was dressed when [fol. 67] he picked you up?

A. He had dark slacks on, either a sweater or sports coat.

Q. What color was the coat, if it was a coat?

A. Might have been brown.

Q. Might have been brown, is that what you said?

A. Yes.

Q. Did he have on both a sweater and a coat, or one or the other?

A. He might have had a sweater on under the coat. I didn't see the sweater.

Q. You did or did not see the sweater?

A. I'm not sure. He either had on a sports coat or a sweater.

Q. Was he dressed any differently when you saw him when you identified him than when you were riding in the car with him?

A. When I identified him, he looked like he had on the same pants and shirt, but the gold sweater he had on when I identified him, he might have had it on and might not have had it on.

Q. What kind of shirt did he have on when you saw him in the car?

A. Solid color, white, I think.

Q. Business shirt, sport shirt?

A. What do you mean by a business shirt?

Q. The shirt you have on would be a business shirt.

A. You mean a dress shirt?

Q. Yes, that's a better word, dress shirt.

A. Well, his collar was open.

Q. Was it a sport shirt or dress shirt with an open collar?

A. When I wear a shirt without a tie, I call it a sport [fol. 68] shirt. I don't know what you call it.

Q. So that what you saw on him, whether it was a dress shirt or not, he had no—when he picked you up he had a coat on?

A. No, I said I was not sure about that, either a sports coat or sweater.

Q. What did he have on the night you identified him?

A. Gold sweater, light shirt, dark trousers.

Q. If he had a sweater on, would it have been that same sweater or a different one?

A. I don't know.

Q. The sweater you think he might have had on when he was riding with you, would you think that was the sweater he had on when you saw him that night?

A. It could have been.

Q. Was the sweater you saw him with on, was it brown, grey, green, yellow?

A. That night?

Q. When he picked you up—when you were riding with him?

A. It might have been gold.

Q. Might have been gold. It might have been some other color? Was it a sweater that you pull over your head or you button down?

A. It was a button.

Q. That was the one on that night?

A. If he was wearing a sweater that afternoon, it was a button down.

Q. Long sleeves?

A. Yes.

Q. I'm not sure that we identified the color of the trousers that he had on. What color were the trousers he had [fol. 69] on when you identified him?

A. Dark color.

Q. What do you mean by dark color?

A. Either a dark grey or dark brown.

Q. Either dark grey or dark brown. Could they have been black?

A. I don't believe they were black.

Q. Could they have been blue?

A. No; I don't believe they were blue.

Q. They were dark grey?

A. Or brown.

Q. And I think your testimony is that when he picked you up—when you were riding in the car—these trousers were the same.

A. Yes, they seemed to be the same.

Q. Same pants, but there may be some difference as to whether he had on a sweater or coat?

A. I don't know.

Q. I'm attempting to get your testimony.

A. Well, I'm sorry but—

Q. That's what I understand your testimony to be.

District Atty: Your Honor, this is the first time we have objected. I think this has gone far enough; it's gone three, four, or five times already. He's testified dark trousers, dark grey or dark brown—

Court: Ask the question.

Atty Carter: Now, if in your statement that you gave to Mr. Pearson in Clarksdale on March 3rd, if you said at that time that the defendant had on a light colored, brown or grey sports coat, would that have been when he picked you up?

[fol. 70] A. Yes, that was when he picked me up, because he didn't have on a sport coat that night.

Q. You are saying that your testimony at the time when you saw him, when you made your statement, was that he had on a light colored, brown or grey sport coat, dark brown trousers. Does that refresh your recollection?

A. A little bit.

Q. Which is the more accurate testimony that you recall?

A. Well, really, I think the one on the tape recorder because it was fresh in my memory at the time.

Q. Therefore, if you said on the tape recorder that he had on a light colored sports coat and dark brown pants, this should be more accurate memory?

A. Yes.

Q. More than any testimony that you have given today?

A. About the clothes he was wearing.

Q. On the tape recorder there is a mention made about the defendant's connection with the NAACP. Was this mention made before you identified him or after?

A. Afterwards.

Q. Afterwards. You described on the tape the car as being a big, black, new car. Do you—have you seen the defendant's car since this incident?

A. From a distance.

Q. Would you describe that as a big, black, new car?

A. Well, at the time it looked like a fairly new car and it wasn't any compact car by any means.

Q. At the time of the tape recording and the statements you made, you made no mention, as I can recall, of the ash tray or the dentyne gum wrappers.

A. No, I didn't remember that until afterwards.

[fol. 71] Q. You remembered that afterwards?

A. Yes.

Q. After you made a full statement of the incident, then you remembered the dentyne gum wrappers?

A. That's right.

Q. Now, as I heard your testimony on the tape, you gave the time you left Memphis as 3:00 o'clock and that you reached Clarksdale a little before or after 6:00 o'clock, does that refresh your recollection?

A. No, I don't believe it was 6:00. It might have been 7:00 because at 6:00, if I remember correctly, I was at Shelby.

Q. If you made that statement to the police on March 3rd you were mistaken?

A. About what?

Q. If you told the police on March 3rd that you reached Clarksdale a little before or little after 6:00 o'clock, then you were a little mistaken?

A. Yes. If that's what I said, I was mistaken and was mixed up on the times.

Atty Carter: Your Honor, we have asked this witness to testify. He signed a warrant or signed a statement in Shelby. We haven't seen that and that has not been produced.

Court: He testified that he signed something. He didn't know what it was.

Atty Carter: We have nothing that he signed anywhere with his signature on it.

Court: Do you know where it is?

Atty Carter: He said he signed it in Shelby.

Court: Who has it?

Atty Carter: It should be in the possession of the [fol. 72] County officers.

Court: Do you have any papers? (Speaking to County Attorney.)

County Atty: No, sir, I have no such papers.

Atty Carter: In Shelby, at whose request, when you signed this statement or warrant, did you sign?

A. I don't remember.

Q. Was it Mr. Nassar, there? Is Mr. Nassar one of the officers?

A. I don't know.

Q. As I remember your statement, you said that you were—that one of the officers was named "Manuel" and another officer was from Clarksdale, and you went into the police station at Shelby and reported it to them. Now, did you sign—when you signed the warrant, did you sign it at Mr. Manuel's request?

A. I don't know. I don't remember too clearly little things like that because I was shook up at the time.

Q. You don't remember the time of your statement or warrant for purpose of arrest? You don't remember that?

A. I signed something; I put my name on a piece of paper.

Q. In Shelby?

A. In Shelby.

Q. Was this a statement you prepared, or was it prepared for you?

A. I don't even remember if it was a statement. I don't know that much about law.

Q. Was it a form?

A. What kind of a form?

Q. Well, I'm asking you.

A. How should I know if you don't?

[fol. 73] Q. Well, you signed it, I didn't.

A. If it was a form, I signed it.

Atty Carter: Your Honor, if the statement, or whatever statement this witness signed in Shelby, we think we are entitled to have it.

Court: I don't know how we can get it; we don't know where it is.

County Atty: Or what it is.

Court: You tell us where it is and we will try to get it.

Atty Carter: I'm in no position to tell you where it is, your Honor, the statement—

Court: I'm in no position to get it if I don't know what it is or who has it.

Atty Carter: He indicated it's either a statement or a warrant and was signed in Shelby.

Witness: I didn't indicate. I don't even know what it is.

Court: The motion is overruled. Move along.

Atty Carter: One more thing I want to be sure of and I think I will be through. Are you—is your recollection that the only statement that you signed was the statement or paper that you signed in Shelby? Did you sign any other papers?

A. I really don't remember.

Atty Carter: Your Honor, I think that the witness should be directed to answer that question as to whether the statement that he made of this incident on the tape recorder was reduced to writing or not. He either signed it or he didn't. He is the complaining witness.

Court: Ask your question and I will rule on it.

[fol. 74] Q. There are two questions I want to ask. Did you sign any statement other than the statement that you testified to that you signed in Shelby?

A. I really can't say, because it was all happening too fast and I was nervous and everything. Right now I don't remember. If I did, I did; I didn't, I didn't. I know I signed something. I have been up here two hours—wish you would hurry up.

Q. Other than that, you don't remember signing anything else?

A. No.

Q. Your best recollection, was the tape recording—when you made your statement, was the tape recording reduced to writing and did you sign anything in Clarksdale?

A. I don't remember.

Q. Do you recall whether the tape recording was reduced to writing?

A. I don't remember. If I did, I would say so.

Atty Carter: Your Honor, we will conclude our examination of this witness with the understanding that we will have the opportunity to reduce the recorded statement to writing, and we, at that point, would offer as evidence and the Court could rule on whether it was

relevant. We also want to point out to the Court that we reserve the right for further examination of this defendant—this complaining witness in respect to anything said in that statement as reduced to writing and to these statements he has made today.

Court: I'll rule on that as it comes up. I can't say now what is going to happen tomorrow. When the evidence is offered and a request made, then I'll rule on it.

Atty Carter: The only thing I really want to say, your [fol. 75] Honor, is that as far as the complaining witness is concerned, we want to be sure he is available for examination and that the Court rule that he may have a right to examine him. We don't want him released from subpoena.

Court: I have no control over that.

Atty Carter: I'm asking the Court to protect or assume control over it. The Court has the complaining witness here. The Court can either order him—either the State can make him available or the Court can either order him to be made available tomorrow or any time it is necessary.

Court: You will have him here tomorrow? (Indicating to County Attorney.) He will be here.

Atty Sandifer: We have learned for the first time—this witness, through his testimony, has disclosed that he executed and signed certain papers in Clarksdale and Shelby that, I am assuming, the prosecutor takes the position that those papers are not now in his possession. In view of the disclosure of this witness with respect to those documents, we would want to take the further position that we would want this witness available subject to our efforts to subpoena whatever records that might be in Shelby or Clarksdale with which this witness has made reference.

Witness excused.

Court: Call your next witness.

MANUEL NASSAR, witness for and on behalf of the State, being first duly sworn, testified as follows:

Direct examination.

By Hoke Stone, District Attorney:

[fol. 76] Q. You are Manuel Nassar?

A. Yes, sir.

Q. Where do you live, Mr. Nassar?

A. Shelby.

Q. Were you in Shelby, Mississippi, on the evening or afternoon of March 3, 1962?

A. I was.

Q. What official position, if any, did you then hold?

A. Deputy Marshal, Deputy Sheriff, Bolivar County.

Q. Mr. Nassar, is Shelby in Bolivar County, Mississippi?

A. Yes, sir.

Q. What district in the county?

A. Third Supervisor's District.

Q. Third Supervisor's District, Bolivar County?

A. Yes, sir.

Q. How far on the other side going up "61" does Bolivar County extend?

A. Twelve miles from Shelby.

Q. Is Alligator in Bolivar County?

A. Yes, sir.

Q. In the same Judicial District?

A. Yes, sir.

Q. I direct your attention to this afternoon of March 3, 1962. Did you have an occasion to see this man who just stepped from the witness stand, Eliert?

A. Yes, I did.

Q. What were the conditions under which you saw him?

A. What do you mean?

Q. Did he make any complaint of any law violation to you as an officer?

A. Yes, sir. He made a complaint about catching a ride

[fol. 77] with—

Q. Where were you—just a minute. Where were you when you saw him and where was the complaint made?

A. He was in a telephone booth. Charlie Reynolds, a patrolman from Clarksdale, was down here and we had been out in the country looking for a colored fellow, and we come in and he was in a telephone booth—

Q. Where?

A. In front of the City Hall; telephone booth was outside the City Hall. I backed into the curb like I always do, and he come out of the telephone booth and said, "Officer, I have been looking for you."

Q. How were you dressed?

A. In my uniform—had my pistol and everything on.

Q. Was your car marked?

A. Yes, sir. He said, "Officer, I have been looking for you. I caught a ride in Clarksdale, from Clarksdale to Shelby, with a colored fellow in a 'Star Chief' car; black, 'Star Chief', '61 car. The tag number is '1769'." I believe that is what it was. Charlie Reynolds was going into the City Hall and took him in there with him.

Q. Who is Charlie Reynolds?

A. He is a patrolman from Clarksdale Police Department, and I told Charlie to get a "28", that's a registration—

Atty Sandifer: Objection, your Honor, on what he might have told the other officer.

Court: Sustain the objection.

District Atty: What was done?

A. Got a "28" on the tag on the registration of who the car belonged to. It belonged to Aaron Henry from Clarksdale.

Q. Do you have an idea the time, Mr. Nassar?

[fol. 78] A. It was between 4:45 and 5:00 o'clock—I mean 5:45 and 6:00 o'clock. It was 5:56 when we got the registration on the car.

Q. 5:56?

A. Yes, sir. I asked the boy did he want to sign the affidavit of complaint and he said he did.

Atty Sandifer: Objection as to what he asked this complainant.

Court: Sustain the objection.

Q. What was done, Mr. Nassar? I think you will probably have to limit this on what was done and not the consultation.

A. Eilert signed an affidavit. I took the affidavit and warrant down to Judge Rowe, the Justice of the Peace there, eighty-four years old. Went down there and he used a rubber stamp—he cannot write his name—been using it for years. At that time he had the stamp at his house, been keeping it there. I called Clarksdale and told them to pick him up; we had a warrant for him. They said, "When we get the warrant we will pick him up." I sent the warrant back by Charlie Reynolds, and I sent this Eilert back to Clarksdale with him.

Q. Mr. Reynolds?

A. That's right.

Q. Did you go to Clarksdale later?

A. I did later, yes, sir.

Q. Were you present when Eilert identified Aaron Henry, if he did?

A. No, sir, I was not present.

District Atty: No further questions.

[fol. 79] Cross examination.

By Jawn Sandifer, Attorney:

Q. Officer, about what time of day was it when you first saw the complainant?

A. About 5:40, when we drove up there.

Q. And, specifically, where did you see him?

A. He came out of the telephone booth and met at the car at the sidewalk.

Q. How was he dressed at the time?

A. I didn't pay attention as to how he was dressed.

Q. Now, did he approach you or you approach him?

A. He approached me. He came out of the telephone booth.

Q. Did he tell you that he had been hitchhiking?

A. He did. He had caught a ride from Memphis to Walls with a man, and from Walls to Clarksdale with two sailors, and caught this ride in a black, '61, Pontiac for which he had the tag number.

Q. All this hitchhiking was in the State of Mississippi?

A. Part in Tennessee—started in Memphis.

Q. How long have you been an officer?

A. June 1st will be nineteen years I have been Deputy Marshal and five years as Deputy Sheriff.

Q. And I take it, you are fairly familiar with the laws and statutes of Mississippi as an enforcing law officer, is that correct?

A. I think so.

Q. Are you familiar with the hitchhiking stafute in the State of Mississippi? Did you know that there was a hitchhiking statute; statute that prohibits hitchhiking in the State of Mississippi?

[fol. 80] A. No, I didn't.

Q. In your entire nineteen years as an officer in the State of Mississippi, have you ever been aware of the fact that there was a statute that prohibits, or makes it illegal, to solicit rides on the highways in the State of Mississippi?

A. No, I didn't know it. If we locked up everybody that was hitchhiking, we wouldn't have enough jails to put them in, white and colored.

Q. If I now told you there is a statute that prohibits or makes illegal soliciting of rides along the highways in the State of Mississippi—if I now told you that there was such a statute and had you had knowledge of this statute when you met this complainant, would you have made an arrest?

A. What do you mean?

Q. Let me call your attention that Lee had violated the law, had broken the law in the State of Mississippi by hitchhiking, and you had knowledge of that, would you have arrested him?

A. We have never arrested a hitchhiker, not unless he had committed some kind of crime.

District Atty: Your Honor, we believe that is improper questioning. Not what he would do under certain speculative provisions, but what he did do and what he knows about this matter is what is relevant.

Court: I sustain the objection.

Atty Sandifer: Are you familiar with the vagrancy laws in the State of Mississippi?

A. I am.

Atty Carter: Excuse me, your Honor, the complaining witness is still under oath and subject to call as a witness and has not been excused. It has been brought to our [fol. 81] attention that he is in the courtroom. He should not be in the courtroom listening to testimony.

County Atty: Sterling Lee, you will have to leave the courtroom. Come back to the witness room.

Q. Officer, I asked you whether or not you were familiar with the vagrancy laws?

A. Well, some of them I am.

District Atty: Your Honor, we have no intention of getting into another case. If they want to make an affidavit against Sterling Lee for hitchhiking, well do it.

Court: Sustain the objection.

Q. Now, let's get back to the complainant, Lee. After you had this conversation with Lee, where did you go?

A. In the City Hall.

Q. And did Lee accompany you to the City Hall?

A. He did.

Q. Now, will you tell us exactly what happened when you got to the City Hall? Who did you see and who did you talk to?

A. I only talked to Lee. He told me about it the second time, nearly all of it. In the meantime—

Q. When I speak of Lee, I actually mean Eilert.

A. That's right. In the meantime, Mr. Charlie Reynolds radioed Clarksdale to get registration on that tag. I asked him if he wanted to sign the affidavit of complaint against him and he said he did.

Q. That's Eilert?

A. Yes. I filled it out charging him with disorderly conduct and he signed it. I filled it out myself. I carried it and a warrant down to Judge Rowe's house—

Q. Just a moment before you get that far. You filled [fol. 82] out this charge and you had who to sign it?

A. Eilert. Sterling Lee Eilert signed an affidavit and the Judge signed—where he was supposed to sign, he put his rubber stamp on it.

Q. Do you know what happened—where that affidavit is now?

A. Frank Wynne can tell you about that.

Atty Sandifer: I ask the County Attorney to produce the affidavit.

County Atty: I don't have it; I don't know where it is.

Witness: Lawyer Carter might can tell you where it's at.

COLLOQUY BETWEEN COURT AND COUNSEL

County Atty: If it please the Court, I imagine what they are talking about is the affidavit is probably still at Shelby, Mississippi. We amended the affidavit, the original affidavit, which we had a right to do. On the trial of the case before the Justice of the Peace, we asked to amend the affidavit, and we were granted that right, and the affidavit is now a part of the record of this Court as the amended affidavit. Now, the original is probably still in Shelby, Mississippi; I have no idea where the original is.

Atty Sandifer: Now, your Honor, I certainly take exception to the statement made by Mr. Wynne—this brings us back to the preliminary motion that we made this morning. Now, we take the position that there is no original affidavit attached to the papers that are on file in this Court, and that there was no original affidavit signed by Eilert before the Justice of the Peace, and that is the basis of our preliminary motion made this morning; that the only papers that were before the Justice of the Peace at the time this defendant was tried was the general affidavit, which is part of the record here now, and it is that very original affidavit that, in our judgment, the missing of that affidavit

[fol. 83] is what makes the whole jurisdiction of this Court defective.

Court: When was the affidavit amended?

County Atty: The affidavit, your Honor, was amended when this case was called for trial in Shelby, Mississippi, on the hearing before the Justice of the Peace, Judge Rowe, at Shelby. We asked leave of the Court at that time to amend the original affidavit, which under the law of the State of Mississippi have a right to do. We were granted that permission by the Court. We amended that affidavit in the presence of Judge Rowe; Judge Rowe signed the affidavit; I signed the affidavit in his presence and Judge Rowe signed it, and we gave a copy of that affidavit to the attorneys for the defendant and asked them at that time if they had any objections and they said, "no."

Atty Carter: Your Honor, we now get to a question of recollection. The affidavit under which the defendant was tried in the Justice of the Peace, the affidavit which you have in your file in this case, there is nothing in that affidavit to indicate that it was amended; nothing to indicate that it would supersede any affidavit at all; no statement on the face of it that it was amended. There was no statement before the hearing before the Justice of the Peace at which I was present that an affidavit was being amended. We were read a general affidavit and a general charge. Now, there was an original affidavit, an original warrant, other than this, plus the fact that, your Honor, please, the Justice of the Peace has certified that the only thing in his possession—the only papers in his possession—is this general affidavit. If, as a matter of fact, another affidavit was present, we are entitled to see it.

Court: If nobody has it, I don't know how we are going to produce it.

[fol. 84] Atty Brown: If it please the Court, your Honor, this certificate further says here by the Justice of the Peace that, "I, the Justice of the Peace, further certify that the following are all of the original papers in this cause and that they are attached hereto, to-wit, general affidavit—1; cost bill—1; capais—1; appeal bond—1, subpoenas—8;" no indication whatsoever of any other original

affidavit ever being a part of the original file according to the certificate.

District Atty: Your Honor, may I make one observation? This Court has original jurisdiction of this cause or has appellate jurisdiction of this cause, and as to what happened back before that trial has no particular bearing on this matter whatsoever. If we tried him on the general affidavit that Mr. Wynne signed there that morning just before Court started, it was absolutely proper procedure in the J. P. Court. If you want to call that a general, original affidavit, all right; if you want to call it an amended affidavit, all right. Actually what happened, of course, his Honor knows that Mr. Nassar might not know how to prepare a proper affidavit, and Mr. Wynne sat down and prepared before the trial started and signed it himself, which the County Attorney has every right to do, and he was tried on that affidavit, and he is here in this Court on that same affidavit. Looks like to me that this trial de novo is on that affidavit. All these preliminaries have no particular function here in this Court anyway. Strikes me that you could set aside the entire J. P. proceedings and the County Court could now try this case de novo on the original affidavit, or could have then.

Atty Sandifer: This witness, through his own testimony, has testified that the original affidavit upon which this [fol. 85] defendant was arrested was the affidavit that he has just testified to which was the affidavit signed by Eilert. Now, obviously, that affidavit should have become the necessary part of the file in order to convey jurisdiction upon the Justice of the Peace. The Justice of the Peace has certified, as we have repeated over and over again, that the only papers before him was the general affidavit. Now, this very problem was before the Circuit Court in the case we cited this morning, Bramlett vs. State, in which the Court observed that the error assigned is that the Circuit Court was without jurisdiction because the affidavit was void ab initio. Now in this instance, we say that the affidavit that we are speaking about is not even a part of the file; we are not even raising the question as whether or not it was void ab initio, but we think it was missing, and

in Bramlett vs. State, which is the case we just cited over and over again, the Court concluded that if the Justice of the Peace had no jurisdiction, the Circuit Court acquired none on appeal, and they reversed on the same basis that we are now urging here in this Court.

Court: Is it your position that this is not the affidavit that the case was tried on?

Atty Sandifer: It is our—frankly, we don't know what happened to that affidavit and that is what we are trying to find out. He was tried on the general affidavit here, obviously, but the Justice of the Peace certifies that this is the only affidavit that was before him, and this affidavit is defective.

County Atty: That is the affidavit he was tried on.

Atty Sandifer: It is a general affidavit.

Court: My question was: Is it your contention that this affidavit at the time of the trial is not the affidavit that was used in the Justice of the Peace Court—Is that your [fol. 86] position?

Atty Sandifer: This is the affidavit the defendant was tried on.

Atty Brown: Your Honor, the thing about it is, the file indicates that he was arrested on a warrant which was not supported by an affidavit whatsoever. When he was initially arrested, if you will look at the file, the affidavit there shows that it was executed on the 14th day of March. He was arrested on the 3rd of March. There is a warrant there dated the 3rd of March. When it was executed there was nothing in the file to support that warrant.

Court: This affidavit was amended when the trial came on in the Justice of the Peace Court. What you want is the Court to get that affidavit that was originally made?

Atty Sandifer: Your Honor, this Court is bound by the records that are before this Court and that have been certified by the Justice of the Peace. Now, if the affidavit was amended, certainly there should be some indication here in the file that is before this Court—that an amended affidavit was submitted—there is nothing here to indicate that this was an amended affidavit.

Court: Tell me what you want me to do—what is your position that I should do?

Atty Sandifer: Your Honor, what we want you to do is to grant the motion that we made this morning—that this Court cannot now cure—

Court: I have already ruled on the motion this morning. What I am talking about is what do you want me to do now?

DEFENDANT'S RENEWAL OF MOTION TO DISMISS AND OVERRULING THEREOF

Atty Sandifer: We are asking you now, your Honor, in the light of this witness' testimony which you did not have advantage of before you this morning—but we are now [fol. 87] saying that in the light of this witness' testimony that he made the arrest based upon an affidavit signed by Eilert and that affidavit is now missing and there is nothing in the record before you to indicate that that affidavit was ever filed or that there was—that there is any amended affidavit in this file. We are renewing the motion on the application that we made this morning to dismiss—

Court: That motion is overruled. Proceed with the examination.

Atty Sandifer: Your Honor, in view of all of these missing records that are developing here—

Court: All of these missing records?

Atty Sandifer: Well, there are certain missing papers. Eilert, during his testimony, has testified that he signed a warrant and signed certain papers that aren't before the Court. This witness now testifies that the original affidavit was signed by Eilert which is not before the Court. We certainly feel that at this point those records are absolutely necessary in order for us to properly protect the interest of our client, and I would, therefore, at this time ask the Court to issue subpoena duces tecum for any and all records pertaining to this trial which were taken by the officials of this county to be produced in this Court forthwith.

Court: Motion is overruled.

Atty Sandifer: That would apply to Clarksdale also. Now, what was your disposition on that.

Court: Overruled.

Atty Sandifer: Your Honor, just so that I can understand thoroughly what our position is—I understand in your jurisdiction that it is not necessary to take exceptions to each of your rulings that are against us. Am I [fol. 88] right on that assumption? That we are deemed to have taken exceptions?

Court: It is my understanding that you automatically have exceptions to all adverse rulings.

Atty Sandifer: We also want to thoroughly request on the record we think that the rulings that you have made are certainly contrary to the due process that this defendant is entitled to.

Q. Now, officer, coming back to your first encounter with Eilert, when for the first time did he mention to you the license plate on this car?

A. When he started talking to me, telling me what happened.

Q. Now, did you ask him how long he had been out of this car at the time of the questions?

A. Yes.

Q. And what did he tell you?

A. That he got out just up the street about a block and a half from the City Hall—went into a cafe there and tried to call the police and did not get anybody, and he come on down to the City Hall to use the phone there or see if I was there or the other man one.

Q. Did he say how long he had been standing there?

A. Didn't say how long he had been standing there—that is what he did when he got out of the car. He went to the cafe to call to see if he could locate the police.

Q. Now, how long did he talk to you before he mentioned anything about the license plate?

A. When he started talking the first thing he said was Star Chief—black, Star Chief, automobile.

Q. And do you recall what numbers he gave to you?

A. If I am not mistaken, it was 1769.

Q. Now, when he gave you that number, did he refer to [fol. 89] any piece of paper on which he had written this number?

A. Did not have a piece of paper that it was written on. I asked him which way did the car go. He said, "across the railroad, made a block and turned back and went north." I asked him did he see the prefix on it which was a "C" or "B" or whatever County it was which has "C-14" is Coahoma County and "C-6" Bolivar County. He said he couldn't see it. It had some kind of red emblem over that part of the tag. Could not see it.

Q. Now, did you ask him whether or not he had repeated this number purely from memory or whether or not he had written it down?

A. Didn't write it down, he memorized it.

Q. Well, when for the first time did you write this number down, or did you ever write it down?

A. I didn't write it down. Went in there—

Q. You simply retained it in your mind? Is this number that you just mentioned, 1769—I mean, is that a very common number?

A. No, when they tell it to you two or three times you won't forget it right quick.

Q. Are there a number of cars in the county that have the prefix of those four numbers?

A. Not the first four—those are the last four—the prefix—

Q. Well, the last four?

A. 4, 5, some of them don't have but one.

Q. Is that common?

A. Starts at one and goes up.

Q. Now, did you make any memorandum or write down any note as a result of your conversation with Eilert? Did you at any time reduce anything to writing, any note? [fol. 90] A. No.

Q. I repeat, did you at any time write down any note that resulted in your conversation with Eilert?

A. No more than when I filled out the affidavit that he signed.

Q. That's the only thing that you put in writing?

A. Yes.

Q. Now, let's come back to these numbers again that we were talking about a moment ago. That 1769—how

many counties within the entire whole State of Mississippi could have cars—could have borne that same number?

A. Eighty-two counties, I imagine.

Q. Approximately how many cars could have borne that number?

A. Eighty-two.

Q. Did you check any other counties other than the county in which this defendant lived?

A. Only checked Coahoma County 'cause he was headed back North. We picked him up in Clarksdale.

Q. Is that the only reason why you checked that county alone? No other reason?

A. Yes. Picked him up in Clarksdale, and Clarksdale is in Coahoma County.

Q. You didn't see yourself the car owned by this defendant going back in that direction?

A. No.

Q. Have you ever heard of Henry before?

A. No.

Q. Did you go to serve this warrant on Henry?

A. I did not. Sent it back to Clarksdale by Mr. Charlie Reynolds, the patrolman from Clarksdale who was in Shelby at that time. Eilert went back with him.

[fol. 91] Q. Were you present at the time he was brought back?

A. I was.

Q. Did you participate in any other phase of the investigation?

A. I went up there later with Mr. Conner to bring him back to Cleveland in Bolivar County.

Q. When you went up there later, you mean where?

A. City jail in Clarksdale.

Q. Did you see Mr. Henry there that night?

A. Yes.

Q. About what time of day or night was that?

A. About 9:30 or 10:00 o'clock or little earlier.

Q. Was Eilert present at that time?

A. He was sitting in the lobby.

Q. Did you have any further conservation with Eilert?

A. No.

Q. Did you have any conversation with Henry?

A. No.

Q. Now, was that the first time that you had seen Mr. Henry?

A. First time I had seen Henry to know him.

Q. First time you had ever seen him in your life?

A. Yes.

Q. Can you tell us how Mr. Henry was dressed at the time you saw him that night?

A. Didn't pay any attention.

Q. You didn't pay any attention. You have no knowledge of how he was dressed?

A. No.

Q. Mr. Henry's car was the only car that you checked in connection with this?

A. Yes.

[fol. 92] Q. How long did it take you to ascertain that the car that you were seeking was Henry's car?

A. All you got to do is call and give anybody the tag number and they can tell you who it is right away.

Q. So within a matter of minutes, you had identified Mr. Henry as the owner of the car?

A. That's right.

Q. Were you at any time present during the time Mr. Pearson was questioning Eilert?

A. Right at the end.

Q. When?

A. Right at the end of the questioning. They were in there a long time before I ever got there, all of them.

Q. Let me ask you something—did you ever discuss the case before you came to trial today?

A. Only at the trial in Shelby.

Q. Many times.

A. No, not many times.

Q. Did Eilert give you any description of the man that he was riding with.

A. Said he was short, fat, about 40 or 45 years old, dark complexion.

Q. What about his dress?

A. I don't remember how he said he was dressed. He did tell me that the car was '61, Star Chief, with red uphol-

stery, cigarette lighter wouldn't work, ash tray on his side had dentyne chewing gum wrappers in it.

Q. Now, would you say that the sole basis for your identification of Henry was the four numbers of the license plate? That was the sole basis? It wasn't based on the physical description that Eilert had given you?

[fol. 93] A. From the tag.

Q. It wasn't based on the description of his manner of dress of clothing?

A. No. The tag and the red emblem, druggist emblem or something over the prefix.

Q. Did you at any time prior or subsequent to the arrest of Mr. Henry examine the interior of his car?

A. No, I didn't.

Q. Never did?

A. No.

Q. You did not participate in the examination of the interior of his car at all?

A. No.

Atty Sandifer: No further questions.

Redirect examination.

By Hoke Stone, District Attorney:

Q. At the time the decision as to who the defendant might be was being made Mr. Charlie Reynolds was there also, wasn't he, Manuel?

A. Yes, sir.

Q. He is from Clarksdale, Mississippi, is that correct?

A. Yes.

Q. Did he assist you in making the decision?

A. Yes, sir, he did.

Q. And his assistance also led to the making of the affidavit against that particular party?

A. Eilert described him and the car, and he said he thought that was who it was. He called for a registration on the tag.

Q. The call was made by Reynolds to the Clarksdale [fol. 94] Police Department, is that correct?

A. That's correct.

District Atty: No further questions, your Honor.

Witness excused.

CHARLES REYNOLDS, witness for and on behalf of the State, being first duly sworn, testified as follows:

Direct examination.

By Hoke Stone, District Attorney:

Q. What is your name?
A. Charles Reynolds.
Q. Where do you live, Charles?
A. Clarksdale.
Q. How long have you lived in Clarksdale, Mississippi?
A. About twenty-five years.
Q. What official position, if any, did you hold in Clarksdale, Mississippi, on or about the 3rd day of March, 1962?
A. Patrolman, Clarksdale Police Department.
Q. How long have you been employed by the Clarksdale Police Department?
A. Four years and seven months.
Q. In that capacity at that time were you familiar with the description of Aaron Henry—did you know Aaron Henry?
A. Yes, sir.
Q. The defendant here?
A. Yes, sir.
Q. How long have you known him?
A. Quite a while—don't know exactly how long—several years.
Q. As a police officer did you happen to know what kind of car he owned and generally drives?
[fol. 95] A. Yes, sir.
Q. Did you at that time?
A. Yes, sir.
Q. What kind of car was it?
A. '61, black, Pontiac, Star Chief, 4-door.
Q. Direct your attention to that March 3rd, 1962. Were you on duty as a Clarksdale policeman that day?

A. No, sir, I'm off on Saturday.

Q. Where were you that afternoon?

A. Well, up until about 4:00 o'clock I was in Clarksdale, and I left Clarksdale at 4:00.

Q. Who was with you? Was anyone with you?

A. Yes, sir, a friend of mine, Jack Stripling.

Q. What did you and Jack do?

A. We went down to Shelby.

Q. What did you do at Shelby?

A. Well, I went down there in reference to an investigation that I had been helping a man—he has a lawyer services; he is an investigator for a lawyer in California, and—

Atty Sandifer: Your Honor, I object to all that. It has nothing to do with this case.

Court: Sustain the objection.

Q. The witness by the name of Eilert, Sterling Lee Eilert, who testified here this morning, do you now know him?

A. Yes, sir, I do.

Q. Prior to that day did you know him?

A. No, sir, I did not.

Q. Did you see him on that date?

A. Yes, sir, I did.

Q. Where and what was the occasion?

A. I saw him coming out of the phone booth at the police department in Shelby.

[fol. 96] Q. Who was with you at that time?

A. Mr. Nassar, the policeman there in Shelby, and Jack Stripling and myself.

Q. Was he coming out of the phone booth when you saw him?

A. Yes, sir. We had backed into the curb there and gotten out of the car and started into the City Hall, and he came out of the phone booth over to us.

Q. Gotten out of what car?

A. That was Mr. Nassar's car.

Q. Did he report to Mr. Nassar a law violation?

A. Yes, sir;

Atty Sandifer: Objection.

Court: Sustain the objection.

Q. Did you have occasion to assist Mr. Nassar in the identification of the certain party charged with the crime?

A. Yes, sir.

Q. What did you do?

A. I was asked by Mr. Nassar to go to the police radio—

Atty Sandifer: Objection as to what he was asked by Mr. Nassar unless it was in the presence of the defendant.

Court: Sustain the objection.

Q. What did you do? You can't say what Mr. Nassar asked you to do.

A. I radioed the Clarksdale Police Department from the Shelby Police Department for a registration, which we call a "28", on a tag number 1769 and gave a description of the car that I received as a Star Chief, which is a Pontiac, and a late model car which would bring it in the weight range of a "C" tag, and I called for a "28" on it, and I received a reply from the Clarksdale Police Department as being registered to Aaron E. Henry at 636 Page Street, [fol. 97] Clarksdale, Mississippi, for a '61 Pontiac, 4-door.

Q. What then happened at the Clarksdale Police Station—I mean the Shelby Police Station that you know about?

A. I know that the boy, Sterling Lee Eilert, signed an affidavit and I received a warrant—

Q. You don't know that he signed—

A. No, sir, I received a warrant.

Q. What did you do with the warrant?

A. At that time I was ready to go back to Clarksdale, and I brought the warrant plus the subject, Sterling, back to Clarksdale with me and my friend, Jack Stripling.

Q. What did you do with the warrant that you transported from Shelby, Mississippi, to Clarksdale?

A. I delivered it to Chief B. C. Collins, Clarksdale Police Department.

Q. What did you do with Eilert?

A. I delivered him also to the Clarksdale Police Department.

Q. Did you after that participate in any of the investigations that followed at the Clarksdale Police Department?

A. I was present there when the defendant was brought into the station, but as far as being involved in any initial investigation, I wasn't.

Q. As far as participating in any investigations, you weren't, is that correct?

A. Yes, sir.

District Atty: No further questions, your Honor.

Cross examination.

By Jawn Sandifer, Attorney:

Q. Now, Officer, how long would you say you were employed by the Clarksdale Police Department?

[fol. 98] A. Four years, seven months.

Q. On March 3rd what was your tour of duty?

A. On March 3rd?

Q. Yes.

A. I was on my day off. I'm off every Saturday.

Q. You were off duty?

A. Yes, sir. I was off my regular police duty. We receive one day a week off.

Q. Now, you said there came a time sometime during the course of that afternoon you received a call from Shelby, is that right?

A. No, sir, I didn't receive a call.

Q. Someone transmitted certain information to you?

A. No, sir, not to me. What I said was that I called from the Shelby Police Department to the Clarksdale Police Department on the Shelby Police Department radio for a registration on the tag.

Q. Where were you at the time you received that call?

A. The answer back from Clarksdale?

Q. Yes.

A. In the City Hall in Shelby Police Department.

Q. And as a result of that call you said you left Clarksdale and came to Shelby?

A. No, sir, I was in Shelby, and I went—left Shelby and went to Clarksdale.

Q. What did you do, officer, when you got this call?

A. Which call?

Q. When you received the—

A. The reply?

Q. Yes.

A. I informed the officer present, which was Officer [fol. 99] Nassar, of the call. He wasn't in the back. The City Hall is divided. The radio was back behind a partition, and he was up front with the subject, Sterling Lee Eilert.

Q. What did you do after you had had this conversation or had informed Nassar of the information you received?

A. I didn't do anything there for about fifteen minutes. I was down there primarily for something else. I wasn't down there on police business—I would have to tell you what I was down there for and you stopped me a while ago. I was down there on a case of my own, I'll say, and I was trying to figure out a way I could accomplish it. Mr. Nassar came to me and asked me if I was going back to Clarksdale, and I told him "yes", I was. He asked me if I would deliver the warrant back to the Chief of Police, and I told him I would. He asked me would it be all right if this boy, Sterling, would ride back to Clarksdale, and I told him it would.

Q. Now, you testified that you were present when you saw Eilert sign something, is that correct?

A. I don't—I can't say under oath that I saw him sign anything. I don't remember at the time. Officer Nassar was in the other room, and I believe he and the boy came back there, and my buddy and I were talking about this other deal we had going, and there was quite a bit of conversation in the room, and like I said, I was trying to figure out a way for this boy to do something for me that was with me. I had an opportunity to well—I would just have to tell you what I was down there for to tell you—

Atty Sandifer: I haven't asked.

A. I know, I can't explain it to you.

Q. I believe on direct examination when Mr. Wynne was examining you, you said that you had seen Eilert sign the [fol. 100] affidavit, am I correct?

A. No, sir. I think I did, but I think I recalled it.

Q. Well, did you see Eilert sign an affidavit?

A. I can't say under oath, because I don't remember. I was writing at the time myself, and the way I remember

it, the desk is here, and I was here, and my buddy was here, and Mr. Nassar and the boy was down at the end of the table, and they were talking, and I don't remember all of the conversation they had—like I said, I wasn't concerned with it. (Indicated with hands position of table and positions.)

Q. In other words, you really didn't have your mind on this particular situation, but you were concentrating on some personal deal of your own?

A. That's right. I don't have any jurisdiction down there in the county, and I wasn't going to put my two-bits in.

Q. This warrant that you took back to Clarksdale, was that the only paper that you had in your possession when you went back to Clarksdale?

A. Yes.

Q. Did you look at that warrant at all on your way back to Clarksdale?

A. No, I didn't. I took it and walked out and got in the car and slipped it under the seat, and I went back—in a hurry to get back and didn't pay any attention to it. I picked it up when I got out of the car and carried it in and gave it to the Chief and said, "Here is a warrant sent up here by Shelby." I was still interested in my other deal going and my buddy and I walked to my office in the back and that's where we stayed.

Q. In other words, if I showed you what purports to be the warrant in this case—if I showed you that paper [fol. 101] today, would you be able to identify it as the same paper or identical paper that you took back on that day?

A. I don't know whether I can say for sure whether it is an identical paper or not. The man had a warrant. I didn't have any reason to doubt that he was not giving me a warrant. He said, "Here's a warrant" and I said, "See you later." I got in the car and left.

Q. At the time you took the warrant back, did you know upon whom this warrant was going to be served?

A. Yes. That was the only person that we— He said, "Here is a warrant for Aaron Henry, and if you are going

back to Clarksdale, would you mind taking it by the Police Department and giving it to the Chief?" Something to that effect—I don't remember the exact words as to whether he said, "take this back", or "do you mind taking it back", but I was fixing to go, and I told him I was getting ready to go back to Clarksdale.

Q. Now was Eilert present at the time the warrant was handed to you?

A. Who?

Q. Eilert, the complainant in this case, was he present at that time?

A. Yes.

Q. Was there any discussion—were you the only officer or person in that room at that particular time that had known Henry from some previous time?

A. Well, I can only speak for myself.

Q. As far as you know?

A. Like I said, I would imagine that the friend of mine that was down there with me knew him. I don't know whether he knew him any more than just by sight. I didn't [fol. 102] ask him; I didn't have any reason to ask him.

Q. Who else was present in the room at the time you were handed the warrant?

A. Well, there was Officer Nassar and the boy, Sterling, and myself, and Mr. Stripling.

Q. Now, did you indicate in the presence of Eilert and the others that you knew the person that was described in this warrant? Did you indicate at that time that you knew him?

A. Sure. I said I knew him; I've been knowing him.

Q. Do you know him in connection with his activities in the NAACP?

A. I can't help but know it.

Q. Did you mention this at this particular time?

A. I don't know if I did. Like I said, I wasn't that interested. I wasn't taking an active part in anything. I wasn't trying to press any charges.

Q. Did Eilert show any reaction or any response when you mentioned the fact that you knew Henry in connection with his activities in the NAACP?

A. Like I said, I don't recall mentioning it to Eilert. I did say that "I do know him", which I do. I couldn't tell a lie cause I know him—see him nearly every day on the streets in Clarksdale.

Q. Do you know Mr. Henry in a friendly manner?

A. I wouldn't say friendly. As a policeman you don't get friendly with many people, because you don't know what day you aren't going to have to arrest them and they they commence with that story about "well, wait a minute, I'm a buddy", and you can't—you got to play the law enforcement right down the middle of the line. You can't be buddying up with anybody. I have personal friends; I'm not saying he is a personal friend of mine.

[fol. 103] Q. After you had delivered the warrant in Clarksdale, what, if anything, did you thereafter do in connection with the investigation of Henry?

A. I didn't do anything.

Q. You didn't do anything?

A. I didn't do any investigating.

Q. Let me ask you this—prior to March 3rd were you familiar with the type of car that Mr. Henry owned?

A. Yes.

Q. Did you ever have occasion to give him a ticket in Clarksdale?

A. I don't think I have.

District Atty: What was the question?

Atty Sandifer: I asked him if prior to March 3rd whether or not he was familiar with the car that Mr. Henry drove and whether or not he had ever given him a ticket or have occasion to give him a ticket.

District Atty: What was his answer?

A. I said, "I don't believe I have." I guess I have written eight or nine hundred tickets this year. I mean, not this year but within the last twelve months. I don't remember all of them, but his drug store, as you probably know, is located on 4th Street, and that is contained in what is known as beat six, and I have worked beat six probably more than any other beat in town. I have seen his car parked in front of his drug store; I have seen him getting in his car. I

have worked on beat seven; I've seen him out at his house. I answered a call across the street from him one night, and he walked across the street to find out what the trouble was, and he got in his car and pulled back up in his driveway—up in his garage before he left. I see him every day.

[fol. 104] Q. Have you ever had occasion to have examined the interior of Mr. Henry's car?

A. No more than just riding by or walking down the street and looking in. If I walk down the street—on occasion we don't normally walk the beat, so to speak, but on occasion we do get out and walk the beat late at night or on a Saturday or weekend when we have a lot of trouble, and I guess I notice every car I pass looking for drunks just like everybody else.

Q. Now, I want to make certain that I understood you. After you delivered this warrant, did you participate in any phase of this case at all after you had delivered the warrant?

A. Let's see. I was in my office when the Chief of Police brought Henry to the station, and I was working back at the desk at that time on this other deal.

Q. Will you fix me a time on that? The date?

A. That's the 3rd. I got up and walked outside and walked up front—let me go back. I don't want to miss nothing. When we got to the station I went back in the office, and my friend was kinda overdue for supper, and I started back out to take him home—we were in my personal car—and started out the door, and I told the sergeant, "I'm going to eat." Eilert asked me, "Is there anywhere I can get anything to eat?" I told him, "Yea, you can go down to the bus station," which is just a block west of the station, and I took subject home. I don't remember what time it was, but it was a good while after dark. At my home we eat at dark so I had missed my supper so I came back to the station, and when I got back—don't remember if it was when I walked in the door—Eilert was sitting there eating a cheeseburger, a package of potato chips, and a coke, I believe. I know I made mention of what he [fol. 105] was eating. I don't know whether it was when I come back in or I had gone in the office and come back

out that I asked him, "Can you recognize the subject that was in the car?" or something like that.

Q. Whose car was he in?

A. We were in the station at that time. He said, "Oh, yes." I went over to the water fountain and got some water. I had come back up front—

Q. Now just a moment. How long was this—you mean by the subject, you mean Mr. Henry, is that right?

A. No, I'm talking about Eilert sitting down eating in the station.

Q. What was the question you asked him?

A. I asked him if he could identify the subject that was involved in the little episode—I just asked him if he was sure he could identify the subject.

Q. At that time when you asked that question, was the alleged subject present at the station house?

A. No. I was on the way to the water fountain and come back out and went back to the office, and I had come back up to the desk sergeant's office, and if I am not mistaken, I had either gone out into the corridor to get a coke or back in that part of the building—we have lots of room back there. I was working on this other deal, and I had some notes back in my locker, and to make a long story short, after Henry had come in with the Chief—after he had brought him in—

Q. Who brought him in?

A. The Chief.

Q. How many police officers were with the Chief?

A. I believe two—I'm not sure.

[fol. 106] Q. Do you know what their names are?

A. If I'm not mistaken, it was Officer Petty and Officer Collins. I believe they were in the station.

Q. When they brought Henry in the stationhouse, did you see Henry when he walked in the stationhouse?

A. As well as I remember, there is a table there; he walked past it; he walked by and paused at the table—

Court: The question was, "Did you see Aaron Henry when they brought him in?"

A. Yes, sir.

Q. At the time you saw Henry being brought in can you describe where Eilert was seated at the time Henry was brought in?

A. This is the door about middle ways of the lobby. The bench is here (indicating to left of the door) and that's where Eilert was sitting, and the bullpen is back to the right. He come in the door, went through the lobby, and went back to the bullpen. In the bullpen there is a rest desk, we call it, and the prisoner goes around and stands on the left hand side, which makes him facing back towards the sergeant's office.

Q. As far as you are able to tell us, was Henry clearly within the view of Eilert at the time that he was brought in the stationhouse?

A. Sure. He wasn't three foot at the most from him.

Q. Can you tell us approximately how long Eilert would have been able to observe Henry at that particular time?

A. I don't know how long. I don't remember how fast he was walking, but guess it was no further from me to you to the bullpen, but after he gets in the bullpen, he can just sit there and look at him until they put him in jail.

[fol. 107] Q. To your knowledge, as far as you know, would you say that this was the first time that Eilert would have an opportunity to identify Henry as the person he had described as having hitchhiked with earlier or the person who was described in the warrant that you brought back from Shelby to Clarksdale?

A. You mean since the evening of the episode until the Chief brought Henry in to the station?

Q. Yes.

A. During that lapse of time I don't know of any time he could have seen him, because couldn't nobody find him.

Q. Can you tell me whether or not there were any other negroes in the stationhouse at the time Henry was brought in at the time Eilert was sitting there?

A. There was one brought in just before Henry was—a drunk.

Q. Was there any similarity in the appearance between Henry and this other negro that you refer to?

A. I don't remember. I didn't pay too much attention to him—on Saturday night we run anywhere from eighteen

to twenty drunks through there.

Q. This other person that was brought in, was he brought in in connection with the complaint of Eilert, as far as you know?

A. No, he was drunk.

Q. In other words, he was completely unrelated?

A. That's right. He was just a drunk on the street. You know how a drunk acts—hollering and carrying on, loud talk.

Q. Did you get a good look at Henry when he was brought in to the stationhouse?

A. I took—I didn't stop to look at him—I knew it was him.

[fol. 108] Q. Did you speak to him?

A. No, I didn't speak to him.

Q. Now, can you tell us whether or not you can recall how he was dressed when he was brought to the stationhouse?

A. I don't remember for sure, but as well as I do remember, I believe that he had on a wine colored sweater or jacket, or something. That's all that I remember. I don't remember. I passed by him, and he was talking to the Chief on the rest desk, and I turned around and looked at him when I went by, and I saw him when he come into the station, but like I say, I knew it was him and there wasn't no use of me staring at him.

Q. Were you still present at a time Eilert was asked to identify Henry?

A. Well, I was present when the Chief brought Henry in, and Eilert said, "That's him".

Q. Did Eilert give that answer in response to a question from the Chief?

A. I'm not sure. I don't see how the Chief could ask him cause Henry came in first and the Chief behind him—that's the way you bring a prisoner in. You don't let a prisoner follow you, too much danger in getting hit in the head.

Q. Now, I would like to go back to Shelby for a moment, if we may. Were you present in the precinct in Shelby when Eilert gave the description of the man with whom he had hitchhiked with?

A. I was. It was either inside the station or right outside in front.

Q. Did you receive a description from anyone prior to the time that the request went through to Clarksdale?

A. I heard the boy relate his story to Officer Nassar. I [fol. 109] was present. Law enforcement officer—anytime anybody has a complaint, he is going to listen to see what it is all about. I'd say that I didn't take an active interest.

Q. From the information that you heard there in the precinct, did you form any opinion as to who the person might be?

A. From the description and the tag number on the car, best that I could remember at the time, I formed an opinion within myself as to who, and I was asked to get a "28" of registration, and I did and it was true.

Q. Did you suggest to the Clarksdale authorities as to whom you suspected as the person that was wanted?

A. No. That's not allowed according to FCC rules. I called for a "1028" on C-14 1769.

Q. Did you suggest to anyone in Shelby at the time this message was being transmitted to Clarksdale who they thought they were looking for?

A. I might have said something to my friend, I don't remember.

Q. Was your friend present at the time?

A. Yes, he was in the back with me.

Q. In other words, when you transmitted the message to Clarksdale you had a pretty good idea as to who you were looking for?

A. I had a pretty good idea. I didn't—from the physical description of the person and the description of the car, I had an idea. You see it every day, you know it, someone describes it, you can't help but know it.

Q. And the person you had in mind was Aaron Henry, is that right?

A. Yes.

Q. Could you tell me this—how far, or what is the distance, from Route 61 where it intersects with 49 to Shelby? [fol. 110] A. I don't know the correct distance. It takes anywhere from twenty-five to thirty minutes to drive it—depends on how fast you are going.

Q. Have you driven this particular route many times yourself?

A. Yes.

Q. Driving at a rate of about forty-five miles an hour from route 61 where it intersects with 49, approximately how long would it take to get to Shelby?

A. How fast?

Q. About forty-five miles an hour.

A. I couldn't tell you; I don't drive that slow.

Q. One final question—did you hear Eilert give any physical description in Shelby of the man that he claims he was riding with?

A. Yes.

Q. Would you tell us what that physical description was?

A. Well, he described him as being above the average and rather intelligent speaking person. He described him —of course he couldn't give any description on height, because he was sitting down, but he described him as being of a normal build, and I don't remember the exact weight that he estimated. I don't remember if he even estimated a weight, but he kinda guessed about how thick he was and the type haircut he had, and the color of his skin—the shade of his skin and—

Q. What shade did he give?

A. He said it wasn't what he had known as a brown, and was not what you'd call a black. That would possibly mean what I would call a medium brown.

Q. Did he give any physical description as to the [fol. 111] clothing he was wearing?

A. I believe he did, but I don't remember what it was.

Q. You don't remember anything about the description of the clothing?

A. No, I don't. I didn't write it down or anything.

Q. Did you at any time examine the interior of Henry's car subsequent to his arrest on the 3rd of March?

A. No.

Q. Did you talk with any of the officers that might have examined the interior of the car?

A. Yes.

Q. Was that on the same night that he was arrested?

A. Yes.

Q. Did this conversation take place in the presence of Eilert?

A. I don't believe so, no.

Q. Is it possible that it could have?

A. No, I don't think so, because I had gone back into the office, and one of the men that was with him when he came back—I know that he was looking for him because I heard it on the radio—and we were just talking about it in general, but I asked him a question that the boy told me. I asked him if he had looked at the car, and he told me that he did, and I asked him if what the boy had told me was true, and he said, "Yes," it was.

Q. Now, at the precinct in Shelby did the boy give you any description of the interior of the car?

A. Red.

Q. In Shelby?

A. Color was red.

Q. Is that what he said?

[fol. 112] A. Yes.

Q. Did he say anything about the ash tray?

A. Said the ash tray had some gum wrappers, and the cigarette lighter wouldn't work when he went to light a cigarette.

Q. Did he say what kind of gum wrappers?

A. No, he didn't say. I don't remember him saying. I don't think he called a brand. I believe I remember a color—believe he said it was a red or orange color.

Q. He didn't say anything about the brand?

A. He didn't say anything to me about it.

Q. Did he say anything in your presence about the location of the ash tray in the car?

A. I was trying to think—he was talking about the cigarette lighter. He went to light a cigarette, and the cigarette lighter wouldn't work, and said he went to dump his cigarette ashes in the ash tray and it was full of wrappers.

Atty Sandifer: No further questions.

(Witness excused.)

SYLVIA MOORE, witness for and on behalf of the State, being first duly sworn, testified as follows:

Direct examination.

By Hoke Stone, District Attorney:

Q. What is your name?
A. Sylvia Moore.
Q. Where did you live on March 3, 1962?
A. Clarksdale, Mississippi.
Q. What official position, if any, did you hold in the City of Clarksdale? What's your job in Clarksdale, Mississippi?
A. Desk Sergeant and radio dispatcher for Police Department.
[fol. 413] Q. I gather you operate the radio?
A. That's right.
Q. Were you on duty on the evening and afternoon of Saturday, March 3rd, 1962?
A. Yes, sir.
Q. Do you keep a log of the traffic that comes in and goes out by radio?
A. Yes, sir.
Q. Do you have this log with you at this time?
A. Yes, sir.
Q. According to that log, I am going to ask you if you got any radio traffic from the Shelby Police Department somewhere in the neighborhood of 6:00 o'clock?
A. Yes, sir.
Q. What does your log show that traffic was, and what does your memory dictate that traffic was?
A. The Shelby Police Department at 5:56 on March 3rd called for a registration on C-14 1769 tag number from Coahoma County. (Reading information from log.)
Q. Is that the record that you have there?
A. Yes, sir.
Q. Who called you on the radio? Did you recognize the voice?
A. Yes, sir.
Q. Who called?
A. Patrolman Charles Reynolds.

Q. Of the Clarksdale Police Department, is that correct?
A. Yes, sir.
Q. And he asked for a registration? You all refer to that as a "28", is that correct?
A. Yes, sir.
Q. Now, when you get such a request, how do you go [fol. 114] about procuring the information and dispatching it back?
A. We have the registration and the book that is compiled from the Coahoma County Sheriff's office records.
Q. Now this is the log that you have here, is that correct?
A. Yes, sir.

OFFER IN EVIDENCE

(District Attorney shows the log to defense attorneys.)

District Atty: The Court please, we would like to introduce this log into the record with the right to withdraw it and substitute a copy therefor, if necessary.
Atty Carter: No objection.

(Marked "State's Exhibit S-4" by the reporter.)

[fol. 115] Q. Sylvia, where on the log is the reference made pertaining to this call at 5:56 P. M.? Will you stand up and point it out to the jury, please?
A. Right here. (Indicating with finger on log to jury.)

Court: Mr. Stone, we can't get any of that in the record.
District Atty: Sylvia, will you talk loud, please, and tell the jury what you—

A. The Shelby Police Department—

Atty Sandifer: Your Honor, I want to object at this time, because I think the record has been placed in evidence and speaks for itself.
Court: I think so too.

Q. Would you take this pen and place a larger check by the column that you are referring to: What are you making two checks for, Sylvia? Is there other traffic pertaining to Shelby?

A. Yes, it is.

Q. What is it?

A. I gave the registration, C-14 1769—I called the Shelby Police Department back and gave it to them as Aaron E. Henry of 636 Page Street, Clarksdale, Mississippi, for a '61 Pontiac.

Q. At what time?

A. I gave it right back to them.

Q. At 5:56?

A. Yes, sir.

Q. What happened at 6:04?

A. At 6:04 the Shelby Police Department called back advising to be on the lookout for the above car, which was the Aaron E. Henry car. He was wanted at the Shelby Police Department for disorderly conduct. A warrant had been issued.

[fol. 116] Q. That's what your record shows?

A. That's from my record.

District Atty: You may have a seat. I would like to now pass this to the jury.

(Log is passed to jury.)

(Witness returns to chair.)

Q. Now, Sylvia, you are familiar with the method of licensing vehicles in the State of Mississippi, aren't you?

A. Yes, sir.

Q. There has been some conversation about "C-14," etc. What does the "C" mean?

A. The "C" is the weight of the car. You have four weights in the new 1962 licensing of cars. The A, B, C, and D are the weights.

Q. As a general rule, what does the "A" refer to?

A. Smaller cars, the little—

Q. Foreign cars?

A. Yes.

Q. As a general rule, what cars get the "B" tag?

A. That is still some of the foreign cars that are heavier than some of the smaller cars.

Q. What does the "C" refer to?

A. The "C" is just a heavier car.

Q. Does it embrace the Star Chief, Pontiac?
A. Yes, it does.
Q. Now, the "D" tag, what does that include?
A. Still heavier cars.
Q. But does not take in the Star Chief, is that correct?
A. No, sir.
Q. Did you know at that time that this number 1769 was given you, did you know what class to look in without having it given you on the radio?
[fol. 117] A. Yes, sir, I did.
Q. Why would you know that?
A. The ones that we have not sold in the "D" classification—we had not sold "1769" at that time and we still haven't.
Q. Does that also apply to "A" and "B"?
A. That applies also to "A" and "B". It could only be in the "C" category.
Q. Then if you were only given the "1769" without anything else, you would know to look at the "C"?
A. That's right.
Q. What does the "14" mean?
A. That's the county.
Q. Do all Coahoma County automobile license plates carry the number "14"?
A. Yes.
Q. When this traffic came in at 6:04, what did you do?
A. I advised the cars of the traffic—that the Shelby P. D. advised that they had a warrant for this subject, Aaron E. Henry.
Q. And you in turn in the course of your duty so put that out on the radio?
A. I did.
Q. Is that correct?
A. That's right.
Q. Did you make this log at that time?
A. I did, yes, sir.

District Atty: No further questions.

[fol. 118] Cross examination.

By Robert Carter, Attorney:

Q. Could the total license number of that car be C-14 1769?

A. That is the total license number.

Q. Now, am I correct that at 5:56 you received a call from Shelby for a "28" on C-14 1769?

A. Right.

Q. Now, you then—you have the registration numbers right in your office, and you looked at the books and identified that this was who it was, etc.?

A. That's right.

Q. I see an entry at 6:04—was that an entry call to your office or from your office?

A. Into our office, and I gave it to the cars at that time.

Q. Does this also reflect calls out of the office?

A. Yes, FCC regulations.

Q. Maybe we didn't understand each other. Does this reflect both calls coming into and out—

A. Both into and out.

Q. Now, the entry at 5:56 P. M. on the log is an entry from Shelby?

A. That's right.

Q. And the entry at 6:04 was an entry from Shelby.

A. That's right.

Q. I note no entries in this connection on this log from your office.

A. From our office—it's all listed in the same thing right there; it's just a matter of two or three seconds of mashing the button. We don't list it that way.

Q. You would list that call into your office—you would list it altogether?

[fol. 119] A. Just like it is listed right there.

Atty Carter: No further questions.

Witness excused.

Court: Gentlemen, we are going to adjourn until in the morning at 9:00 o'clock.

(Recess at 6:00 P. M. until 9:00 A. M. Tuesday.)

*****

(Court reconvened at 9:00 A. M. Tuesday.)

Jury in Box

Atty Carter: Before we start, your Honor—you recall that yesterday the question of our opportunity to have taken down in written form the testimony from the tape recorder—when I saw you last night, you indicated that we couldn't do it last night, that it would have to be done this morning. I have a secretary here prepared to do it.

Court: Is Mr. Pearson here?

District Atty: No, sir, he is en route.

Court: As soon as Mr. Pearson comes, we will take the matter up.

Atty Carter: I want to point out to the Court the element of time in terms of our being able to use this.

Court: We will take it up as soon as Mr. Pearson arrives.

Ben C. Collins, witness for and on behalf of the State, being first duly sworn, testified as follows:

Direct examination.

By Frank O. Wynne, Jr., County Attorney:

Q. Would you state your full name to the Court, please, sir?

[fol. 120] A. Ben C. Collins.

Q. Mr. Collins, where do you live, sir?

A. Clarksdale, Mississippi.

Q. What is your official capacity at Clarksdale, Mississippi, if any?

A. Chief of Police.

Q. Of the City Police at Clarksdale?

A. Yes, sir.

Q. Mr. Collins, how long have you lived in Clarksdale, Mississippi?

A. Since after I came back out of the service in '54. I lived in Clarksdale about four years prior to going into the service.

Q. How long have you been Chief of Police there, Mr. Collins?

A. Since July 3, 1961.

Q. Mr. Collins, you know the defendant here, Aaron Henry?

A. Yes, sir.

Q. I believe he is a resident of your City; is that correct?

A. Yes, sir.

Q. Mr. Collins, I bring your attention back to the day of March 3rd, a Saturday afternoon of this year. Did you receive a call from your radio dispatcher concerning the defendant?

A. Yes, sir.

Q. What was that call?

Atty Sandifer: Objection.

Court: Sustained.

County Atty: Were you advised that a warrant had been issued for the defendant?

A. Yes.

Q. On receiving that warrant what did you do?

A. Upon receiving the warrant or receiving the complaint?

Q. Receiving the call.

[fol. 121] A. On receiving the call—I was running the radar machine—I advised car 6, who was Mr. Petty, to be on the lookout for that car—

Atty Sandifer: Objection as to that, your Honor. It is not binding on the defendant on what he did, any advice he gave a third party out of the presence of the defendant.

County Atty: I withdraw the question.

Q. Did you then on receiving the call that a warrant had been issued for the defendant notify your patrolman to be on the lookout for the defendant?

A. Yes, sir.

Q. Did you at that time give a description of the defendant's automobile to any of your officers?

A. I didn't give a description; I think all officers know his automobile.

Q. When did you receive this warrant—did you see the warrant?

A. Yes, sir.

Q. When did you receive this warrant from Shelby, Mississippi?

A. Some time prior to 7:00.

Q. Where did you get the warrant from—whom did you get the warrant from?

A. I got it from the desk sergeant in Clarksdale.

Q. On receiving the warrant for the arrest of the defendant, what did you then do?

A. Went to Aaron Henry's house and arrested him.

Q. About what time was this?

A. I went to his house probably about six or seven minutes before 7:00. When I was coming out of the house after I had made the arrest it was 7:00.

Q. How do you know of the time?

[fol. 122] A. Because as I started out of the house, Aaron Henry asked me what time it was, and I looked at my watch and told him it was 7:00.

Q. On arresting the defendant—describe the arrest. What did you do?

A. I went to the house and knocked on the door. Aaron Henry's wife came to the door, and I asked her if Aaron was in, and she advised me he was, that he was in bed. I asked her why he was in bed, that he had only been there a few minutes. She said, "Yes, sir, he just came in and gone to bed—going to take a nap." I asked her to get him up. She went back there and Aaron Henry came in the front room in his bathrobe. I showed him the warrant and told him we had a warrant from Bolivar County for his arrest for disorderly conduct. He took the warrant and read it and asked me what it was about, and I told him I did not know; the only thing I had was a warrant.

Q. Then what did the defendant do?

A. He went back into his bedroom, and I followed him there and he put on his clothes, and while he was in there, he picked up the telephone and made two telephone calls. After he got through dressing he came out. He asked me what time it was when we started out the door, and I immediately brought him to the jail.

Q. Now, after you had arrested him—I believe you said he was not dressed when you first went to the house. Is that correct?

A. That's correct.

Q. And later he went into his room and dressed?

A. Right.

Q. Do you have any knowledge at all as to whether these were the same clothes that he had had on previously?

[fol. 123] A. I couldn't say.

Q. In other words, you had not seen the defendant during the day; is that correct?

A. No, sir.

Q. On taking him to the city jail, what did you do on arriving at the city jail with the defendant?

A. I carried him inside straight through to the hall to where we write them up, a desk back in the hall.

Q. Is that the hall back to the right as you go in the jail?

A. Yes.

Q. Was the witness, Sterling Lee Eilert, present when you brought him in?

A. I didn't see Mr. Eilert myself until after I had put him in the cell and came back. Sterling Lee Eilert was sitting on a bench behind the door where I brought him in.

Q. Was Aaron Henry at this time identified by Sterling Lee Eilert to you?

A. Yes, sir.

Q. At this time after you had put him—

A. After I came back in I asked who Mr. Eilert was. I asked Sterling Lee then, "Do you know who that was?" He said, "Yes, he is the one that propositioned me."

Q. In other words, you did not know the witness, Sterling Lee Eilert, until you met him there in the police station?

A. That's the first time I had seen him.

Q. After this conversation, what happened? After this, did you have an occasion to talk to the defendant?

A. Yes, sir.

Q. Did the defendant make any statement to you or in your presence?

A. In my presence, yes, sir.

[fol. 124] Q. Were these statements free and voluntary?

A. Yes, sir.

Q. Was there any duress used—was the defendant forced to make any statements?

A. No, sir.

Q. Was he advised of his constitutional rights as to making any statement?

A. I believe he was; I couldn't be positive.

Q. But as far as you know, these statements were free and voluntary?

A. Yes, sir.

Q. No force or duress?

A. No, sir.

Q. As best you remember, what was the statement made by the defendant as to the charges placed against him?

A. He denied it.

Q. He denied it?

A. Yes, sir.

Q. Did the defendant mention where he was or where he had been? Just tell the court just as best you remember what he said in your presence.

A. He advised that he left the drug store around 4:30 and went over to John Melcher's Funeral Home where his car was being washed. He stayed there until some time a little after 5:00 and went home from there.

Q. And that was the substance of his testimony? Did he say anything on what happened on reaching his home?

A. He said that he eat supper— Well, when he went in I believe he said his wife was asleep and he went in and woke her up, and then he eat supper and went to bed. He was going to take a nap. He had a meeting or something around 7:30.

[fol. 125] Q. Did he say in this statement that he had left the house again after that before the arrest?

A. No, sir.

Q. In other words, he had remained at the house until you made the arrest; is that correct?

A. Yes, sir.

Q. Who was present, that you recall, when this statement was made beside yourself?

A. It was Thomas Pearson, County Attorney, Mayor Kincaid—I'm not sure whether Mr. Conner and Mr. Nassar were also present most of the time or not.

Q. You are not sure of the two officers from Bolivar County?

A. No, I'm not sure. They were in and out.

Q. You don't know whether they heard the statement?

A. No.

Q. After taking the statement from the defendant, what then was done with the defendant?

A. He was put back in jail.

Q. Was any officers from Bolivar County there at that time?

A. Yes, sir.

Q. Was he later released from the jail?

A. He was later released to the officers from Bolivar County.

Q. And what did the officer from Bolivar County do with the defendant, if you know?

A. He handcuffed him and put him in the car and left with him.

Q. And what happened to the defendant after that you have no knowledge?

A. No, sir.

Q. Now, after talking to the defendant, did you all talk to anyone else in the room while the defendant was present?

[fol. 126] A. I didn't get your question.

Q. After having taken a statement from the defendant, was a statement taken from any other witness?

A. Yes, sir.

Q. Who were these witnesses?

A. There was Aaron Henry's wife, I believe her first name is Noel.

Atty Sandifer: Your Honor, I would want to know at what stage, at what point, these statements were taken. Were they taken after the defendant was taken by the Bolivar County officers back or were they taken before? I would like the witness to fix the time.

County Atty: As I understand, what he wants cleared up is this. Was the Bolivar County officers present when these statements were taken?

A. They were in and out most of the time.

Q. Whether they were present during the whole questioning of all the witnesses, you do not know?

A. No, sir.

Q. Now go on and state the witnesses who were there.

A. Aaron Henry's wife, and Smith, who works in the drug store, and Sterling Eilert.

Q. In other words, there were four statements taken there at the police station by Mr. Pearson, County Attorney of Coahoma County; is that correct?

A. Yes, sir.

Q. Now, after having taken these statements and things, did you have an occasion to go back to Aaron Henry's home?

A. Yes, sir.

Q. What did you do on reaching Aaron Henry's home again?

A. I walked up to the door; I knocked on the door; Aaron [fol. 127] Henry's—I believe she said she was his mother-in-law came to the door, and I asked her if we could look at the car? She said, "Wait a minute and let me get Noel." Aaron Henry's wife came to the door, and I told her I would like to look at her car, and she said, "Let me get the keys." I advised her I did not need the keys. All I wanted to do was look inside and did not want to crank it up. She said, "Well it is locked up; I'll have to get the keys for you to look at it." She handed me the keys, and we all, myself, Mayor Kincaid, Aaron Henry's wife, and they said Aaron Henry's mother and father-in-law—I didn't know them—and his little girl walked out to the car. I unlocked the car, turned the switch on in the car, plugged the cigarette lighter in—it would not work—

Q. Look in the ash tray?

A. I looked in the ash tray on the right side, and it was filled with red dentyne chewing gum wrappers.

Q. After seeing this, what did you then do?

A. I asked Aaron Henry's wife and the people there, "Can you tell me what's in this ash tray?" Aaron Henry's little girl spoke up and said, "Yes, sir, them is dentyne chewing gum wrappers. I put them in there about three days ago."

Q. Then what did you do?

A. I got out of the car, locked it back up, handed his wife the keys and left.

Q. How was it the Coahoma County Attorney was present when these statements were taken?

A. Because I called him.

Q. You called him and what did you inform him?

A. I informed him that I had arrested him for Bolivar County, and I didn't know what was going to come up of it and asked him to come up there.

[fol. 128] Q. In other words, he came there to the police station at your request?

A. That is correct.

Q. And took the statements?

A. Yes, sir.

Atty Carter: I didn't follow him. Who was the "he"?

A. The County Attorney, Mr. Pearson.

Q. Mr. Collins, how far is it—do you know—from Clarksdale, Mississippi, to Shelby, Mississippi?

A. Approximately twenty miles.

Q. Driving a speed of forty or forty-five miles an hour can you figure approximately how long it would take to drive from Clarksdale from this intersection which I show you in this picture (Exhibit 3), from the intersection of highway 49 and 61 to Shelby?

A. Approximately thirty to thirty-five minutes.

Q. You know the automobile of the defendant, don't you?

A. Yes, sir.

Q. Would you describe that automobile to the Court?

A. He has a black, '61, Star Chief Pontiac.

Q. What's the upholstery?

A. It is reddish interior with brown trimming.

Q. Is there anything peculiar about the dash? Is there any writing on the dashboard of the car; do you know?

A. On the dashboard on the right side has "Star Chief" written on it.

Q. Mr. Collins, I believe you have seen the defendant's car practically every day; is that correct?

A. Yes, sir.

Q. Being Chief of Police there you have occasion to see this automobile.

[fol. 129] A. Yes.

Q. I believe this automobile number is "C 14." Describe those letters. Are they small, big, or large?

A. The "C 14" is smaller than the other four letters. Now his tag number is 1769 and those letters are bigger than the "C 12." On his car he has an emblem about two inches in diameter identifying him as a druggist. It partially covers the "C 14."

Q. Is this disk fastened to the same place the license tag is fastened?

A. Yes, sir.

Q. Mr. Collins, do you recall the 3rd day of March—do you have any idea approximately what time the sun would set on that particular day?

A. I would say somewhere in the neighborhood of 6:00.

Q. Can you read an almanac, a table showing what time the sun would set on the particular day?

A. I think so, yes.

OFFER IN EVIDENCE

County Atty: We would like to introduce, your Honor, an almanac which shows what time the sun would set on the 3rd day of March of 1962.

(Almanac examined by defense counsel.)

Atty Carter: We have no objection to an official almanac being introduced, but this is not such. I don't know whether this is official or not. If you have the official almanac for 1962 to be introduced, we have no objection, but we do object to what we have been given.

Court: Let me see.

(Almanac examined by Court.)

Court: It looks pretty official to me.

County Atty: We would like to introduce this into evidence.

[fol. 130] Atty Carter: Are you introducing the whole book, a page, or what?

County Atty: We will introduce this page 10—just introduce the whole book.

(Marked "State's Exhibit S-5" by the reporter.)

[fol. 131] Court: I want to take up this matter of the tape recorder now. I have just been advised that the machine is back there in my office. Anyone know how to operate it?

County Atty: I have never operated one in my life. That thing belongs to Mr. Pearson, and I wouldn't know how to operate it.

District Atty.: Your Honor, the proper way to introduce it would be to play it, but Mr. Pearson took it down and you saw how inaudible it was yesterday.

Atty Carter: Well, I am attempting to follow Court instructions. The Court has indicated that it has to be reduced to writing. I'm bound by the Court's instructions.

Court: That was what I suggested. Of course you can offer anything you want and I'll rule on it.

Atty Carter: You said that you could not introduce it in that form.

Court: I didn't say what could be introduced. We would have to take that up when we got to it. When he offered to turn it over to you, that would include your having the right to have it transcribed. What would you like for the Court to do?

Atty Carter: We have someone here, and we can take it down. I don't know whether they know how to operate the machine or not. I can verify that and get the machine operating and have her take it down and transcribe it. I understand that is what you told me to do.

Court: I thought that was what you wanted.

Atty Carter: All we want to do is get the testimony in some form.

County Atty: The machine is back there. How to operate it, I wouldn't attempt.

[fol. 132] Court: The machine is in my office and available.

Atty Carter: Will you have a recess so we can get someone to operate it?

Court: I thought you had somebody.

Atty Carter: I do have someone here, but I have to find out whether they can operate the machine.

Court: You can talk to them and see if they know how, but we are not going to take a recess to go back there—what I am trying to say is—the person you have can go on back there and start transcribing it if they know how.

County Atty: Mr. Collins, I show you this almanac which shows the 3rd day of March 1962. Would you read—

Atty Carter: Your Honor, I don't see any reason that Mr. Collins has to read the almanac. It was introduced into evidence. Mr. Collins can verify that almanac. If he wants to read let the counsel read it; show it to the jury; it speaks for itself.

Court: Sustain the objection.

(Almanac shown to the jury.)

County Atty: Gentlemen, as you look at this you will see in this almanac here on the 3rd day of March of this year where the line is drawn around it, it shows what time the sunset was on the 3rd day of March 1962.

Atty Carter: Will you show in the record what page of that exhibit that you have read from?

County Atty: It is page 10. No further questions.

Cross examination.

By Attorney Robert Carter:

Q. I merely want to verify, if I can, to be sure I understood your testimony. As I understood your testimony, you [fol. 133] received a warrant from Bolivar County for the defendant sometime before 7:00 o'clock on March 3, is that correct?

A. That's right.

Q. Who delivered the warrant to you?

A. I don't know. The desk sergeant gave it to me.

Q. You served this warrant and arrested Aaron Henry at what time?

A. I was walking out of the house after he had dressed and made two telephone calls at 7:00 o'clock.

Q. You were walking out of his house and at that point he was under arrest?

A. Right.

Q. And you had served the warrant on him at that point?

A. Yes.

Q. You showed him the warrant and told him that he was under arrest?

A. That's right.

Q. Then you took the defendant down to the police station and put him in jail?

A. Yes.

Q. After you had served the warrant on him and after he was officially under arrest and you had placed him in jail, at that point he was identified as being the man by the complaining witness; is that correct?

A. Yes.

Q. Now, did you then question the defendant?

A. No.

Q. Who questioned him?

A. Mr. Pearson.

Q. Were you present?

A. Yes.

[fol. 134] Q. And was Mayor Kincaid present at that time?

A. Yes.

Q. And who else was present at that time?

A. I don't know whether Mr. Conner and Mr. Nassar were present or not; they were in and out.

Q. Who is Mr. Conner? I know Mr. Nassar. Mr. Nassar is on the police force in Bolivar County. Who is Mr. Conner?

A. Mr. Conner is Deputy Sheriff in Bolivar County.

Q. You don't know whether they were present or not?

A. No.

Q. When did Mrs. Henry come down to the police station?

A. Who?

Q. Mrs. Henry.

A. I went up to their house and got her after the Bolivar County authorities got there.

Q. And what time would you estimate that to be?

A. Some time a little after 7:30.

Q. Did you place her under arrest?

A. No.

Q. You took her in custody?

A. I did not.

Q. What did you do with her?

A. I went down there and told her that the County Attorney would like to talk to her and asked her if she wanted to go to the station, and she said she would be "too glad to." She got in the car, and I took her to the station.

Q. When you questioned Mrs. Henry, who was present?

A. The same people that was there when we questioned Aaron.

Q. Was the defendant present?

A. No.

Q. Now, Mr. Clifton Smith who works in the drug store, [fol. 135] you question him as well?

A. No, I didn't question anybody.

Q. Well, you were present when he was questioned?

A. Yes.

Q. Did you go down and pick Mr. Smith up too?

A. Right.

Q. What time did you pick him up?

A. Just before I had picked up Noel.

Q. By Noel you mean Mrs. Henry; is that correct?

A. Aaron Henry's wife.

Q. Was he questioned at the same time Mrs. Henry was questioned or after she was questioned?

A. He was questioned first.

Q. Now, when Mr. Smith was questioned, was the defendant present?

A. No.

Q. Was Mr. Nassar or Mr. Conner present?

A. They could have been—like I said, they were in and out of there a lot.

Q. But the person doing the questioning was the County Attorney of—I can't pronounce the name of that County.

A. Coahoma.

Q. Coahoma. Now, Mrs. Henry, after being questioned, went back home, I guess, and subsequently you returned to the Henry house for a third visit that day. About what time was that?

A. In the neighborhood of 9:30.

Q. And at 9:30 you went back to the house, got the keys to the car from Mrs. Henry and looked in the car; is that correct?

A. Yes.

[fol. 136] Q. And these gum wrappers that you discovered —on what side of the car were they?

A. In the ash tray on the right hand side.

Q. Was there more than one ash tray in that car?

A. Yes.

Q. Where is the other?

A. One is immediately right of the steering wheel, and the other one is to the extreme right, probably four to six inches from the right hand side on the dash.

Q. Was the defendant present when you looked into the car?

A. No, he was not.

Atty Carter: No further questions.

(Witness excused.)

Court: Call your next witness.

HENRY PETTY, witness for and on behalf of the State, being first duly sworn, testified as follows:

Direct examination.

By District Attorney, Hoke Stone:

Q. What is your name?
A. Henry Petty.
Q. Mr. Petty, on March 3, 1962, what was your occupation?
A. Patrolman for the City of Clarksdale Police Department.
Q. Your residence is Clarksdale?
A. It is.
Q. Was it at that time?
A. It was.
Q. How long have you been patrolman at Clarksdale?
A. Regular status since first of last October.
Q. October of 1961?
[fol. 137] A. Yes. Special police for four years up until that time.
Q. Did you know the defendant, Aaron Henry, at that time?
A. I did.
Q. Were you familiar with his automobile?
A. I was.
Q. On that particular evening did you have occasion to do anything in the nature of looking for the defendant?
A. I did.
Q. What prompted that move?
A. I was directed by the Chief.
Q. Do you have an idea what time it was?
A. Around 6:00 or few minutes thereafter, give or take four or five minutes.
Q. You received the direction, I presume, by radio.
A. I did.
Q. Were you alone?
A. I was.
Q. Were you on duty?
A. I was.

Q. What did you do?

A. I proceeded to look for the defendant, Aaron Henry.

Q. What did you do as you looked—how did you go about looking?

A. I looked for his car where he generally keeps it parked by his place of business on 4th Street, Clarksdale, Mississippi. Also, other places he keeps it parked.

Q. Just outline in your own words the proper sequence, if you can, in order that you looked as best you can remember for the benefit of the jury and the court.

A. By radio from my Chief I was given the call to be on lookout for Aaron Henry and keep him under observation, [fol. 138] or look for his car and get in contact with Aaron Henry. I immediately went by 4th Street drug store where he kept his car parked to see if I could find his car. At that time I was looking for his car; Aaron Henry was supposed to be in his car. Go by 4th Street.

Q. Did you see his car at the 4th Street drug store then?

A. No, sir, I did not.

Q. Go ahead.

A. I called the Chief back and told him his car wasn't there and he told me to go out on the lower end of the highway and see if I could find his car. I proceeded on out 4th Street to Madison Avenue, down Madison Avenue to highway 61 on the south end of town, rode around there a few minutes and did not see his car. I went back down 4th Street by his drug store and looked for his car and it was not there. Also, on Yazoo where he sometimes keeps his car parked; it was not there. Proceeded on up 4th Street east to Florida Avenue, turned right on Florida Avenue, went one block—

Atty Sandifer: Objection. All this is absolutely irrelevant and immaterial. It is not binding on this defendant as to what this officer did.

Court: Sustain the objection.

District Atty: Looks like to us that he is searching for Aaron Henry.

Atty Sandifer: Object to any indication by counsel that would imply that Aaron Henry was in any way attempting to avoid arrest or to imply that this man was concealing

himself. Seems to me that is the only purpose for this type of testimony.

[fol. 139] District Atty: Your Honor, possibly it would be better to exclude the jury at this time and see what he does have to testify to.

Court: Let the jury go out.

(Jury excused.)

District Atty: Aaron Henry has testified—it has been introduced into the record that Aaron Henry made a statement at the police station free and voluntarily that he left the 4th Street drug store sometime in the neighborhood of 4:30. He proceeded to the Delta Burial Association office or to John Melcher's office, which is the Delta Burial Association office in Clarksdale, Mississippi, to pick up his car where it had been washed. He stayed there until a little after 5:00. Ben Collins has testified that is the statement that Aaron Henry made. He then proceeded, according to the statement he made to the police when he denied this, and went home. All right, the purpose of these testimony, and of course it will be damaging to the defendant, is to show that he—we will now go further and see how it applies to where Aaron Henry says he was.

A. Mr. Petty, you were proceeding, I believe, on Florida. Where did you go from there?

Atty Sandifer: Your Honor, the point is this. Certainly this type of testimony might become relevant as rebuttal testimony after Aaron Henry has testified here, but there is no charge here against the defendant that he at any time was attempting to conceal himself or to avoid an arrest, and I say to that extent that this type of testimony at this point is not relevant and is not material.

[fol. 140] Court: It is not necessary to show everywhere he went unless that contradicts him. How are you going to know what contradicts him? He hasn't said anything.

District Atty: We have introduced into the record, if the Court please, the statement that was made as to where he was. Now, I admit that this testimony would be very good rebuttal testimony.

Atty Sandifer: I just want to point out to the Court what you already know and that is, Chief Collins testified that when he received a warrant for the arrest for Aaron Henry, he went directly to Aaron Henry's house and found Henry undressed and in bed. He served a warrant on him and arrested him. Now, that is the only thing germane here. All of this testimony that this officer as to what he did, purportedly, that's the indication the jury gets when the evidence shows that he was home and in bed when the warrant was served on him.

Court: Sustain the objection.

District Atty: Just one minute. Let me ask this question and let me see if your sustain the objection to that. In your search for Aaron Henry, did you go by his home?

A. I did.

Q. Was his automobile there?

Atty Sandifer: Objection as to that. Did he knock on the door and ask for this man, not whether his automobile was visible?

Court: Overrule the objection.

Q. Was his automobile there?

A. It was not.

Q. Can you estimate—did you later find his automobile there?

[fol. 141] A. Yes, sir.

Court: Bring the jury back.

(Jury in box.)

Q. Mr. Petty, after you received instructions to look for Aaron Henry, did you have occasion to observe his home?

A. I did.

Q. Was his automobile at his home?

A. Not the first time that I observed his home, no, sir.

Q. Did you observe it later?

A. I did.

Q. Was his automobile there at that time?

A. It was.

Q. What did you then do?

A. I called the Chief and notified the Chief that his car was at home. The Chief notified me to stand by—

Q. Don't say what the Chief notified you—they are not objecting, but they probably would. What did you do after you notified the Chief?

A. I stood by until the Chief came and made the actual arrest.

Q. Do you have any idea—did the Chief come promptly?

A. He did.

Q. If you care to, could you fix the time interval between the time you first went by Aaron Henry's house and did not observe his automobile there until the time that you went back and observed the automobile to be there?

A. Some twenty or twenty-five minutes.

District Atty: No further questions.

[fol. 142] Cross examination.

By Attorney Robert Carter:

Q. When you went by the house the first time and did not see the defendant's car, what time was that?

A. I didn't actually look at my watch, but a few minutes after six. I believe the call came out about 6:04 to be on the lookout.

Q. Few minutes after 6:00. When you returned, say in about twenty-five minutes, it would be about 6:30—

District Atty: Just one minute—would you ask him the question again and let him answer it. I believe you were answering for him.

Q. When you returned the second time—you said there was an interval of twenty-five minutes between the first and second time you were by his house.

A. It was.

Q. Therefore, you would estimate the time to be about 6:30; is that correct?

A. I would estimate it to be later than that.

Q. Later than that? You estimate it to be what then?

A. Somewhere around ten to twelve minutes to 7:00 o'clock.

Q. On either of the occasions that you went by the defendant's home, did you knock on the door and ask if he were present?

A. I did not.

Q. When you were waiting for Mr. Collins to come by were you in a car?

A. I was.

Q. A police car?

A. I was.

Q. Did you remain parked in the police car in front of Henry's house?

[fol. 143] A. Not in front—I pulled away to the corner.

Q. Did you look into Henry's car at that time.

A. I did not.

Q. Did you on any occasion look into his car?

A. I did not.

Atty Carter: That's all.

(Witness excused.)

County Atty: Would you give us about a five or ten minute recess?

Court: We will take a recess for ten minutes.

(Short recess.)

(Jury takes box again.)

W. C. Norwood, witness for and on behalf of the State, being first duly sworn, testified as follows:

Direct examination.

By District Attorney, Hoke Stone:

Q. State your name and occupation?

A. W. C. Norwood, Deputy Sheriff, Bolivar County, Mississippi.

Q. Mr. Norwood, are you familiar with the highway 61 between Alligator and Shelby, Mississippi?

A. Yes, sir.

Q. This County has two judicial districts; is that correct?
A. Yes.
Q. First and second?
A. Yes, sir.
Q. What district is that located?
A. In the second.
[fol. 144] Q. What district is Cleveland in?
A. The second.
Q. What County?
A. Bolivar County, State of Mississippi.
Q. What Supervisor's District?
A. Shelby is in the Third Supervisor's District.

District Atty: That's all.

Cross examination.

By Attorney Robert Carter:

Atty Carter: No questions.

(Witness excused.)

Court: Call your next witness.
County Atty: State rests.

(State rests.)

Atty Carter: We have a motion to make, but it should be made out of the presence of the jury.
Court: Let the jury go out.

(Jury retires.)

DEFENDANT'S MOTION FOR A DIRECTED VERDICT AND OVERRULING THEREOF

Atty Carter: We're going to make a motion, your Honor, for a directed verdict in this case. We are going to base our motion on several grounds. First, we think that this whole process by which this defendant was brought or attempted to be brought into the jurisdiction of this Court is illegal and void. There is nothing in the record in this case to show that the warrant that was issued against this

defendant was based upon—it must be based in this State and any other State on an affidavit, on a proper affidavit or [fol. 145] a proper complaint by any party. True, there is some testimony that some affidavit was made, and the complaining witness said so, but in the record in this case which is before the Court, no such affidavit is present and there is a verification from the Justice of the Peace that no such affidavit is present in this case; therefore, we contend that the warrant under which this defendant was subjected to arrest was illegal and without force and effect. Secondly, we contend that the warrant having been issued and the testimony of this Mr. Collins on the stand to the effect that after he had placed this man under arrest, he then proceeded to go and search his car, and clearly, this is a violation of his rights under the Fourth Amendment, and it is unlawful search and seizure so the evidence that they have secured against this defendant is illegal and unlawful. Finally, we contend that on the basis of these facts that the affidavit under which the defendant was tried before the Justice of the Peace Court, as we contended yesterday, based upon the statement that was sworn to by the County Attorney, not on information and belief, but directly that this is void and defective and could give the Justice of the Peace no jurisdiction in this case. We contend under these circumstances that the State—that this is an illegal process; that this man's rights have been violated under the Fourteenth Amendment, and finally, we contend that the State has failed to prove beyond a reasonable doubt to any extent to implicate this man in this case. Now, on these basis we contend that this whole process is illegal and void, and that it has permeated and contended the whole process insofar as the jurisdiction of this Court is concerned or jurisdiction over this individual is concerned; therefore, he should be released, and we move for a directed verdict.

[fol. 146] Court: Motion overruled. Bring the jury back.

(Jury takes box again.)

B. F. McLaurin, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Robert Carter:

Q. Would you give your name and address and occupation for the Court?

A. B. F. McLaurin, Route 1, Box 616, Clarksdale, Mississippi. At present I am President of Coahoma Junior College.

Q. Is that in Clarksdale?

A. Four miles out from Clarksdale.

Q. Do you know the defendant, Aaron Henry?

A. Yes, sir.

Q. How long have you known him?

A. I taught him—about 27 or 28 years, I guess.

Q. Now, taking you back to March 3rd of this year—did you see the defendant?

A. I did.

Q. Any time that day?

A. Yes, sir.

Q. Would you tell the Court and jury the time you saw him and where you saw him?

A. On March 3—usually I work at the school till 12:00, and I got a little farm on the side so after dinner I went out on the farm to make my little payroll, and I stayed on the farm until around 3:45. I had a previous engagement with John Melcher on farming business. We were discussing whether to buy fertilizer together or in a carload lot or [fol. 147] whether to get it locally from the merchant, but I was trying to convince John that the year before I lost money buying it in carload lots—

County Atty: I want to object to his testimony. It is not relevant, your Honor.

Court: Sustain the objection.

Atty Carter: Would you get it down to the point where you saw the defendant?

A. I came to Clarksdale around 4:00, fifteen minutes till 4:00. I had an engagement with John Melcher, but when I got to Melcher's place, he was out. I parked my car at

Melcher's place and went to the White Rose Cleaners to get my clothes—

County Atty: Your Honor, let's get down to the facts.

Court: Sustain the objection.

Atty Carter: The chief concern is what time and where did you see the defendant.

A. Between 4:15 and 5:20.

Q. You saw him between 4:15 and 5:20?

A. 4:45 and 5:20.

Q. Where did you see him?

A. At John Melcher's Undertaker Parlor.

Q. Did you—when did you arrive at the parlor?

A. Oh, I arrived there at 4:45, but I went back since I didn't see John Melcher around 5:00.

Q. When you arrived at 4:45 was the defendant in John Melcher's place?

A. Yes, he was there.

Q. When you came back at 5:00 was he there?

A. Henry left between 5:15 and 5:20.

Q. Now, this John Melcher's place that you speak of—is that in Clarksdale or—

[fol. 148] A. That's right, it's in Clarksdale.

Q. Was anyone else present?

A. Charles Stringer. Before I left John Melcher came, John Melcher's secretary, Debora Johnson and her husband, and—

Q. And the defendant?

A. That's right.

Atty Carter: Your witness.

Cross examination.

By County Attorney, Frank O. Wynne, Jr.:

County Atty: We have no questions.

Court: Stand aside.

(Witness excused.)

Court: Call your next witness.

JACK JOHNSON, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Robert Carter:

Q. Give your full name.

A. Jack Johnson.

Q. Occupation?

A. Minister of the Gospel and part time at a private home.

Q. Where do you live?

A. Clarksdale, Mississippi.

Q. Do you know the defendant, Aaron Henry?

A. I do.

Q. Did you see the defendant, Aaron Henry, on March 3?

A. Yes, sir.

[fol. 149] Q. Could you tell the Court and the jury where you saw him and the time you saw him?

A. At John Melcher's office.

Q. What time?

A. Around ten minutes till 5:00, because we left there around eight minutes till 5:00, and we left him in the office when we left.

Q. Why do you fix the time like that?

A. Well, I always pick my wife up—I leave any job I'm on about fifteen minutes till 5:00 to pick her up.

Q. And your wife works at John Melcher's office?

A. Yes, she is the secretary. We most always leave before 5:00. Saturday was our shopping day, and we always leave around eight minutes till 5:00, because we got to the store in plenty of time.

Q. Now, when you came into—you arrived at John Melcher's to pick up your wife at what time?

A. About quarter of 5:00.

Q. And you saw the defendant there when you left at about eight minutes till 5:00?

A. Yes.

Q. Did you notice what he was wearing?

A. No, sir, because we were just fixing to leave when he came in.

Atty Carter: Your witness.

Cross examination.

By District Attorney, Hoke Stone:

Q. You know nothing about his whereabouts on this particular day after about eight minutes of 5:00?

A. No, sir.

District Atty: No further questions.

[fol. 150] (Witness excused.)

Court: Call your next witness.

John C. Melcher, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Robert Carter:

Q. Give your name, occupation, address.

A. My name is John C. Melcher. I am in the undertaking business in Clarksdale, Mississippi.

Q. Do you know the defendant in this case, Aaron Henry?

A. Yes, sir.

Q. Did you have occasion to see the defendant on March 3?

A. Yes, sir, I did.

Q. Where did you see him?

A. At my office.

Q. What time?

A. It was fifteen—I arrived at my office at five minutes to 5:00 and he was there.

Q. He was there at that time?

A. Yes, sir.

Q. How do you fix the time—could it have been quarter to 5:00, 4:30?

A. Well, what happened is—I had been at the Friendship office practically all afternoon, and thought about it being about time for my secretary to be getting off and that was—

Q. What time does she get off?

A. She gets off at 5:00 so I left the Friendship Office to come to the office in order that I might be able to see her and make sure that I would be brought up to date on things that had transpired since I had been to the office, and when [fol. 151] I got there at five till 5:00 she had gone.

Q. Your secretary was not there when you arrived?

A. She was not.

Q. Who was? Was anyone in your office when you arrived other than the defendant?

A. Yes, sir. Stringer, Professor McLaurin, fellow named Collins.

Q. How long after you arrived was the defendant in your presence in the office?

A. The defendant was there—he left between 5:15 and 5:20. In other words, 5:18 to be exact.

Q. Who was there when he left other than you.

A. Professor McLaurin was there.

Q. Did you have an occasion to notice what the defendant was wearing?

A. I didn't pay too much attention.

Atty Carter: Your witness.

Cross examination.

By County Attorney, Frank O. Wynne, Jr.:

County Atty: No questions.

Court: Stand aside.

(Witness excused.)

Court: Call your next witness.

JUDITH TURNER, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

By Attorney Robert Carter:

Q. Give your name.
A. Miss Judith Turner.
[fol. 152] Q. Where do you live?
A. Vicksburg, Mississippi.
Q. What is your occupation?
A. Right now I am in school
Q. What school?
A. Alcorn College.
Q. Do you recall where you were on March 3rd?
A. Yes.
Q. Where were you?
A. I was visiting Dr. Henry's wife.
Q. Where?
A. At 636 Page Avenue.
Q. Is that her home, the home of Dr. and Mrs. Henry in Clarksdale?
A. Yes.
Q. Did you have occasion to see the defendant on that day?
A. Yes.
Q. When?
A. I saw him in the evening.
Q. What time did you see him?
A. Between 5:30 and 5:45.
Q. Where did you see him?
A. I was seated in his living room.
Q. He came in at that time?
A. Yes.
Q. Between 5:30 and 5:45?
A. Yes.
Q. Let me ask you, Miss Turner, why is that time fixed in your mind?
A. Because I was watching a T. V. program.
Q. What was that program?
[fol. 153] A. Dance Party.
Q. And that program comes on at 5:30?

A. 5:00 o'clock.

Q. It is over at what time?

A. 6:30.

Q. Couldn't if have been—do I understand you that the program was going on when he came in?

A. Yes.

Q. Couldn't he have come in between 6:00 and 6:30?

A. No.

Q. Why?

A. Because the program hadn't been on that long before he arrived.

Q. Program hadn't been on very long before he arrived?

A. No.

Q. You are certain he didn't come in toward the end of the program?

A. Yes.

Q. Do you remember anything about what the defendant was wearing when you saw him that day?

A. No, I do not.

Q. Were you alone in the living room?

A. No, I wasn't.

Q. Who was there?

A. The defendant's daughter, Rebecca, and Sidney Wallace.

Q. Mrs. Henry was not there?

A. She was in the back.

Atty Carter: Your witness.

[fol. 154] Cross examination.

By County Attorney, Frank O. Wynne, Jr.:

Q. Now, Judith, I want you to talk up now. I could hardly hear you—

Atty Carter: Now, I am going to object. This witness is on the witness stand. Her name is Judith Turner. She is a young lady; she is entitled to be spoken to with courtesy. This man does not know her, and he can't call her "Mr." or call her "witness."

County Atty: I know of no law or any proceeding in Court that requires me to put a prefix on anyone's name.

Atty Carter: Then don't call her by her first name.

County Atty: Judith Turner, you remember me, don't you?

A. Yes.

Atty Carter: I object, your Honor.

Court: Objection overruled. Proceed.

Q. You remember talking to me yesterday morning before the trial of this case?

A. Yes.

Q. We went in this room right here where all the witnesses are sitting; is that correct?

A. Yes.

Q. And I believe you told me in that room that you had been visiting in the Henry home that day; is that correct?

A. That's correct.

Q. And also, that you had a young man named Sidney Wallace, I believe is his name, come to see you that day; is that correct?

A. That's correct.

Q. And that Sidney Wallace had driven his old car to Henry's house; is that correct?

[fol. 155] A. As far as I know.

Q. Isn't it also true that I asked you what time Sidney Wallace came to Aaron Henry's home, and what was your answer?

A. I didn't remember.

Q. I asked you, "Did you see Aaron Henry on that day?" and what was your answer?

A. Yes, I saw him.

Q. And didn't I ask you what time you saw Aaron Henry, and what was your answer?

A. In the afternoon.

Q. In the afternoon. Didn't I ask you, "Do you know definitely what time it was?" and what did you say?

A. I told you I didn't recall.

Q. You didn't recall. Now, how come it is you recall right now that you saw him between 5:30 and 5:45?

A. You didn't ask me to pinpoint it.

Q. Well, you pinpointed it pretty good for your counsel here. You pinpointed it within fifteen minutes, and the

best answer you gave me yesterday was between noon and in the afternoon.

A. I wasn't on the witness stand.

Q. It don't make any difference whether you were on the witness stand.

I asked you that question. Were you lying then or are you lying now?

A. No, I was not. You did not tell me to pinpoint the time.

Q. I asked you if you knew what time, and what was your answer?

A. You asked me if it was in the afternoon, and I told you "yes."

Q. I asked you "what time."

A. I told you I didn't remember.

[fol. 156] Q. How is it you remember it this morning?

A. You didn't ask me to pinpoint the time.

Q. I want to know whether you were telling the truth yesterday or telling the truth now.

A. Yes, I was. You did not ask me to pinpoint a time.

Q. I asked you very specifically to pinpoint a time. You told me all you knew that you had seen Aaron Henry that afternoon. Now, where did Aaron Henry go after you saw him?

A. After I saw him, he didn't go any place until the policeman came.

Q. Do you know that as a fact?

A. Yes, I do.

Q. Did you go anywhere?

A. No, I didn't.

Q. You remained there at the house?

A. Yes.

Q. But you suddenly come up on the fixed time of 5:30 or 5:45 at this time?

A. Yes.

Q. And you know that to be the truth?

A. Yes.

Q. Only yesterday the only thing you knew, you didn't remember.

A. I told you "in the evening" and you asked me again if it was "in the afternoon", and I told you, "yes."

Q. You say that you go to Alcorn College; is that correct?

A. Yes.

Q. Were you at Alcorn College on Monday?

Atty Carter: I object, your Honor, that has nothing to do with the issue—

County Atty: Cross-examination, isn't it?

[fol. 157] Atty Carter: I don't care what it is, it has nothing to do with the issues in this case.

Court: Objection overruled.

Q. I asked her if she was at Alcorn College last week?

A. Yes, I was.

Q. Did you know that you had been subpoenaed to this Court as a witness?

A. Last Monday?

Q. Last week for this coming trial, did you receive a subpoena?

A. Yes, I did.

Q. Where did you receive it? From what office?

A. I was at home at Vicksburg, and I received it the following day.

Q. You received it the following day?

A. Yes.

Q. When did you go home to Vicksburg?

A. I didn't go home to Vicksburg. I left school and came here.

Q. Left school and went home; is that right?

Atty Carter: She said she left school and came here.

County Atty: In other words, you were here. You were at Alcorn College; is that correct?

A. Yes, sir.

Q. And if a subpoena came back from Alcorn College marked "not found" the officers were lying; is that correct?

A. Would you repeat the question?

Q. I said, "If a subpoena came back—

Atty Carter: This badgering and arguing with the witness—the witness said that the subpoena went to Vicksburg, that she received it the next day, and she came here, [fol. 158] and she is in the presence of the Court. I don't understand what relevancy—

Court: Sustain the objection to the last question he asked.

Q. Do you recall, Judith Turner, yesterday when I talked to you in the witness room that you told me that you didn't remember the time when Aaron Henry came to that house?

A. You didn't ask me to pinpoint it; you asked me if it was in the afternoon.

County Atty: No further questions.

Redirect examination.

By Attorney Robert Carter:

Q. Now, the testimony that you were giving under oath today, is that your best recollection?

A. Yes, it is.

Q. Is that the truth as you know it?

A. Yes, it is.

Q. And when you indicate—what you said is the truth?

A. Yes.

Atty Carter: No further questions.

(Witness excused.)

Sidney Wallace, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Robert Carter:

Q. Would you give your name?

A. My name is Sidney Wallace.

[fol. 159] Q. Where do you live?

A. Clarksdale.

Q. What do you do?

A. I am an elementary instructor at high school in Clarksdale.

Q. Do you know the defendant in this case?

A. Yes, I do.

Q. Did you see him at all on March 3rd?

A. I did.
Q. Where?
A. At his home.
Q. What time?
A. I would say approximately 5:20 P. M.
Q. Was there anyone else present at the time you saw him?
A. Judith and his daughter, Rebecca, and Mrs. Henry was there too, but she was in the back.
Q. You were in the house when the defendant came in; is that correct?
A. Yes.
Q. What time did you leave?
A. Well, I would say I left about 6:25.
Q. Did the defendant leave before you left?
A. Not unless he went out the back way or some other way. He didn't leave out the front.
Q. As a matter of fact, you were in the living room all the time that you were there, weren't you?
A. That's right.
Q. Now, could he have left without you having seen him?
A. Not a possible chance.
Q. Where are the exits from the house?
A. There is a door leading from the carport inside the house; there is one at the front. I don't know of any other ones.
[fol. 160] Q. Are they both—
A. One enters the dining room and one in the living room, but both can lead you to the living room. You can't come through unless you are seen by anyone in the living room.
Q. How do you fix the time as being 5:20?
A. Well, I was at my house. Me and a couple of fellows was having a bull session, sitting around talking. One of the fellows stood up and said, "It is after 5:00; we had better be going." I said, "I got a date, too, I'd better be going, too."

Atty Carter: Don't say what you said, just say what you did.

A. Well, it was a little after 5:00 when I left my house, and I had to take one of the fellows to Grant Street, and so I put him out on Grant, and I put the other one out just a little on this side of Grant, and I came straight from Grant back to Page Street.

Q. And you arrived about when?

A. About 5:20.

Q. I think your testimony was that the defendant came in about 5:20. Did both of you arrive at the same time?

A. Did I say that he came in at 5:20?

Q. You said that you saw him at 5:20.

A. No, I didn't see him at 5:20. I got to the house at 5:20. I don't think I ever said when he arrived.

Q. Maybe you misunderstood my question. What time did you see him?

A. I saw him about ten or fifteen minutes after I got there. I don't know the exact time—how long it was from the time I got there until he came in.

Q. About 5:30 or 5:35?

[fol. 161] A. Somewhere along there.

Q. Did you recall any features of the defendant's dress when you saw him?

A. I'm not sure whether it was a suit he was wearing, or just a dark coat and dark trousers, but I know that it was a dark coat and dark trousers and tie, if I'm not mistaken.

Q. When you say dark, was it—

A. What I mean by that, it was either navy blue or black.

Atty Carter: Your witness.

Cross examination.

By District Attorney, Hoke Stone:

Q. Now, Sidney—

Atty Carter: I'm going to raise the same objection, your Honor, to use of this witness' first name by the District Attorney.

Court: Overruled.

Q. Look at me. Remember me?

A. Yeah, I remember you.

Q. Where did we talk?
A. We talked in some little room in the jail down town.
Q. Where?
A. In Clarksdale.
Q. When?
A. I think it was last Friday—on a Friday.
Q. Friday a week ago, wasn't it?
A. I don't remember.
Q. In the afternoon?
A. Correct.
Q. Who was present?
A. You and a policeman, Deputy Sheriff of Bolivar County.

[fol. 162] Q. I'm not going to try to cross-examine you right now if you will testify truthfully. Will you testify truthfully?
A. Yes.
Q. You tell this jury about the effort I made to get this thing straightened out and clear with you the time that you said you saw Aaron Henry, when, and where.
A. I don't understand what you are saying.
Q. I do not desire to ask you specific questions.

Atty Carter: If you don't want to ask specific questions, then don't ask. I object to this.
Court: I sustain the objection.
District Atty: Tell this jury the things that I asked you, and describe to this jury the effort I made to get you to tell about what you knew.
Atty Sandifer: Your Honor,—
Court: Sustain the objection.
District Atty: That objection sustained?
Court: Yes.

Q. Didn't I ask you in the presence of Mr. Wynne what time you saw Aaron Henry?
A. You did.
Q. What did you answer?
A. I told you I did not remember. I was not sure.
Q. What did you say about the time?
A. That it was in the evening time, afternoon; I didn't know what time.

Q. Did I ask you then, "Well, was it 3:00?"
A. I said, "No."
Q. Did I ask you then, "Was it 5:00?"
A. I told you I didn't know.
Q. Did I ask you then, "Was it about 6:00?"
[fol. 163] A. I told you I didn't know.
Q. Didn't I beg you and beg you to pinpoint within thirty minutes?
A. You sure did.
Q. What did you do?
A. I told you I couldn't remember.
Q. You couldn't remember anything. Didn't I ask you what time you left home?
A. Correct.
Q. What did you say?
A. I told you it was in the evening time.
Q. And you say you had no idea?
A. I told you in the evening time. I told you I wasn't sure, and I didn't want to give you any information I wasn't sure of.
Q. But you are sure now, aren't you?
A. Yes, I'm sure.
Q. You must have conferred with the counsel for the defendant.
A. Sure, we talked.
Q. You pinpointed this thing for your own convenience.
A. I've given it more thought.
Q. Oh, you have given it more thought. Nobody rushed you that afternoon, did they?
A. Well, you got me out of class, and my mind wasn't on it too much.
Q. Your mind wasn't what?
A. My mind wasn't on it too much. I didn't want to give you any information that I hadn't given any thought to, but after I got back I thought about it.
[fol. 164] Q. We talked about thirty minutes, and I begged you for a definite time that afternoon, didn't I?
A. You did.

Q. Virtually begged you, didn't I?
A. Sure did.
Q. All your answer was that you didn't know?
A. I didn't say I didn't know; I said I wasn't sure.
Q. You did not make an effort to establish a time.
A. No, because I wasn't sure at that time.
Q. Was Aaron Henry's car at his house when you got there?
A. I didn't see it.
Q. Was it there when you left?
A. Yes.
Q. What did you answer me to that question the other day when I asked you that question?
A. I told you I wasn't sure.
Q. You just wouldn't answer, would you? You were playing sharp the other day, weren't you?
A. I wasn't playing sharp, I was just—
Q. No, you weren't sharp.

District Atty: No further questions.

Redirect examination.

By Attorney Robert Carter:

Q. When did you have the conversation with Mr. Stone?
A. It was Friday. I don't remember the date, but I think it was a little better than a week ago.
Q. When was the first time you talked to me?
A. The first time I talked to you I think was the night before the trial.
[fol. 165] Q. That was March 13th or 14th. Were you testifying to anything today that you didn't tell me on that day?
A. Am I testifying to anything now that I didn't tell you?
Q. That you didn't tell me then?
A. No, I'm not. I don't remember—the things you asked me—I told you what you asked me.
Q. On March 13th you told me you were at Henry's house and that you saw him around 5:35 or 5:45, and that you were there with Miss Turner and Henry's daughter.

A. Correct.

Q. And that Mrs. Henry was in the back?

A. Correct.

Q. And that Henry came in and went in and ate and went into the back room and was there when you left.

A. Correct.

Q. There hasn't been conversation with me subsequent to your conversation with Mr. Stone to refresh your recollection; is that correct?

A. No, it hasn't.

Q. Now, you are now under oath and is what you have told the Court and the jury is that the truth to the best of your knowledge and recollection?

A. It is the truth.

Q. Were you under oath at the time Mr. Stone questioned you?

A. No.

Recross examination.

By District Attorney, Hoke Stone:

Q. Then this conversation you had with the counsel for the defendant was on or about the 14th day of March, wasn't it?

A. I would say along about that time.

[fol. 166] Q. Then at that time you did know what time you had seen Dr. Henry?

A. Maybe within two or three days I could forget about it.

Q. Then if you knew it then, you knew it when you were talking to me.

A. So many things had happened—it had been a long time.

Q. The truth of the business is you just didn't want to tell me anything.

A. I didn't have to.

Q. Then you did know when you were talking to me what you know now.

A. I don't think I did; if I did, I don't remember.

Q. You're getting back now like you were the other day; is that right?

A. I don't remember.

Q. The truth of the business is you don't remember what time it was, do you? You didn't know the other day?

A. I told you my mind wasn't on it—I thought maybe you wanted me for some bills.

Q. You owe some bills. Didn't I tell you exactly the reason I wanted to talk to you was because I was trying to clear up the matter?

A. Yea, that was afterwards.

Q. That was when you came in. Didn't I initiate the conversation by saying, "Frankly, Sidney Wallace, I want to talk to you, because I understand that you are a material witness in this matter, and I want to clear it up." Isn't that what I said?

A. That's right.

[fol. 167] Q. Then there wasn't any question about whether I was a bill collector or not. The truth of the business is you knew all the time what you are talking about now. You knew what you were going to testify to, didn't you?

A. I hadn't given it any thought.

Q. But you had talked to counsel back on March 14th about it, hadn't you?

A. I did.

Q. And you are talking about it now, but in the interim you had a lapse of memory.

A. It wasn't a lapse. I told you why I didn't. I didn't want to give you any information I wasn't sure about.

District Atty: No further questions.

Redirect examination.

By Attorney Robert Carter:

Q. Well, Mr. Wallace, as a matter of fact—truth of the matter is, you didn't feel under any obligation to tell Mr.

Stone, since you were not under oath, exactly what you kept telling now. Is that true?

A. That's true.

Atty Carter: That's all.

Court: Step aside.

(Witness excused.)

Noel M. Henry, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Robert Carter:

Q. Would you give your name?

[fol. 168] A. I am Mrs. Noel M. Henry.

Q. The wife of the defendant on trial?

A. Yes, I am.

Q. Now, was the defendant, as you recall, in Clarksdale at any time on March 3rd?

A. Yes, he was.

Q. I am particularly interested in the time from about 3:00 in the afternoon from that point on. What time after 3:00 did you see the defendant?

A. I heard his voice in the house perhaps between 5:15 and 5:30. I was relaxing, and he came into the room at 6:00 and—

Q. Into what room?

A. My bedroom. I was relaxing, and he said that he wanted to relax for an hour and a half, because he had a board meeting at 7:30, and he set the clock to alarm, and I noticed the clock—

District Atty: Your Honor, we object to the conversation.

Court: Sustain the objection.

Atty Carter: Mrs. Henry, what I want you to do—the jury isn't interested in what you said, but interested in what happened. Now you fixed the time that you saw him at 6:00, you said he came back into the bedroom. Were you asleep at that time?

A. I was half asleep and half awake when he came in around 5:00 and 5:15.

Q. At 6:00 he came back into the bedroom. How do you know that it was 6:00 when you were asleep?

A. He came into the bedroom, and he was talking to me and he said he was going—

Q. How do you know?

A. I looked at the clock.

[fol. 169] Q. You looked at the clock. It was 6:00 when he came into the room and woke you up. Did he go out?

A. He did not.

Q. What did he do?

A. He relaxed, too.

Q. By that you mean he got into the bed with you?

A. That's right.

Q. Now, what time did you get up.

A. I did not get up until about 7:00.

Q. Was there anything unusual about your getting up?

A. Rebecca, my daughter, awakened me.

Q. For what reason?

A. She came in and awakened me.

Q. And you got up and—did you have any visitors?

A. I had some visitors.

Q. Who were they?

A. You mean at the time I got up?

Q. Yes.

A. Well, I already had house guests, and when I got up Mr. Ben Collins and another officer—

Q. Now, Mrs. Henry, Mr. Collins testified on the witness stand today that you had stated to him that your husband had just come in. He testified that was what you told him. Did you tell him that?

A. I did not.

Q. Who were your house guests or who were the people that were in the house?

A. At that time my house guest was Miss Turner, Miss Judith Turner.

Q. Was she there when the police came?

A. She was there and Rebecca. They were the two that were sitting in the living room when they came.

[fol. 170] Q. Then what happened?

A. Mr. Collins asked, "Is Aaron here?" and I said, "Yes, he is," and I went back to the bedroom and threw him his bathrobe and said, "Mr. Collins—the police want to see you." I went back up into the room and told him that he would be there in a minute, because he was—

Q. By him, you mean Mr. Collins?

A. Mr. Collins. And when I told him he was asleep, he looked at the other officer and said, "I don't see how he can be asleep when he has just been here about ten minutes." He was the one that mentioned the ten minutes.

Q. It was his statement, not yours.

A. It was his statement, not mine.

Q. Then what happened?

A. Well, my husband came in and he told him that he was wanted for disorderly conduct.

Q. Was he put under arrest?

A. He told him that he had a warrant sworn out against him from Bolivar County.

Q. He took your husband away?

A. Yes.

Q. Did you go to the police station?

A. I did.

Q. Did you make any statement to the police?

A. I did.

Q. Who was present when you made your statement?

A. Mr. Collins, and the gentleman here (indicating) did the questioning.

Q. Mr. Pearson?

A. Mr. Pearson. There were several people around the table, but I didn't know them.

Q. Did you at that time tell them substantially the same [fol. 171] thing you are telling us today?

A. Yes. I told them practically the same thing.

Q. Did you see the police again or Mr. Collins again that day?

A. Yes, I did.

Q. What time?

A. Well, it was after I had been questioned. I imagine it was after 8:00.

Q. After 8:00?

A. After 8:00 o'clock that night.

Q. Where did you see him?

A. He came back to the house.

Q. For what purpose; do you know?

A. When he came back to the house my mother-in-law went to the door, and he told her to tell Noel to give her the car keys. I was back in the back, because my phone was continually ringing.

Q. Did you give her the keys?

A. I gave the keys to my mother-in-law and she gave him the keys.

Q. Did he open the door of your car?

A. Yes. He had gone on to the car, and my mother-in-law said, "We better go out and see what he wants." He was already in the car when we got out there.

Q. And you saw him in your car?

A. Yes.

Q. Was he looking through the things in your car?

A. Well, he said he was trying the cigarette lighter.

Q. What else did he tell you?

A. Then he asked me to open the ash tray and what did I see in it.

[fol. 172] Q. What did you see in it?

A. I saw dentyne chewing papers.

Q. How long have you been married?

A. Soon be twelve years.

Q. During the course of your marriage to your husband, have you had any indication, any evidence of any kind—

District Atty: Object to any indication and evidence.

Court: Let him finish the question.

Q. Do you have any indication, any evidence of any kind, that your husband has been attracted to boys?

A. I have not.

Q. You mentioned in the course of your testimony Rebecca. Who is Rebecca?

A. That's our daughter.

Q. The daughter of you and the defendant?

A. That's right.

Atty Carter: Your witness.

Cross examination.

By County Attorney, Frank O. Wynne, Jr.:

Q. I believe you are the wife of the defendant; is that correct?

A. I am.

Q. You are very much interested in this lawsuit, aren't you?

A. Yes, I am.

Q. Very much interested in the outcome of this lawsuit?

A. Yes, I am.

Q. You would do almost anything to see this defendant released from this charge; is that correct?

A. Yes, by telling the truth.

[fol. 173] Q. You went voluntarily to the police station the night your husband was arrested; is that correct?

A. Well, he asked if I would go—yes, I said I would go.

Q. And I believe he said on direct examination that you made a statement to Mr. Pearson; is that correct?

A. That I made a statement to Mr. Pearson? Yes.

Q. And in that statement I believe he questioned you as to the activities of your husband that day, as far as you knew; is that correct?

A. That's right.

Q. I believe that testimony was taken down on a recorder; is that correct?

A. Yes.

Q. Isn't it true that that night when you were questioned Mr. Pearson asked you what time your husband came home, and you told him you were asleep and did not know?

A. I gave him an estimated time. I told him it was between 5:30 and quarter of 6:00. I told him I was asleep and didn't look at the clock.

Q. In other words, if it's on this recording that you said you did not know, that you were asleep then you were mistaken at that time?

A. I still was relaxing when he came in, but I looked at the clock when he was setting the clock.

Q. Did you tell Mr. Pearson that night that you looked at the clock?

A. He didn't ask me if I looked at the clock.

Q. Oh, he didn't ask you. You didn't volunteer any information. Seems to me that this time was of essence in this case and that you would have volunteered that information had he not asked—

[fol. 174] Atty Sandifer: I object to that. That's an opinion of the counselor.

Court: Sustain the objection.

Q. Did you mention anything about 6:00 when he was talking to you?

A. No, I didn't mention anything about 6:00.

Q. But you just got through saying that you looked at the clock and it was 6:00.

A. That's right.

Q. Did you try the cigarette lighter in the car when the police were out there looking at the car?

A. Yes, that's right.

Q. Did it work?

A. No, it did not.

Q. Did you look in the ash tray compartment on the right hand side?

A. Yes.

Q. And I believe you stated to the counsel it was gum wrappers in it; is that correct?

A. Yes.

County Atty: That's all.

Redirect examination.

By Attorney Robert Carter:

Q. When you were questioned by Mr. Pearson, did he tell you what your husband was charged with?

A. He did not.

Q. Did he ask you if you knew what time your husband came in?

A. He said that Mr. Collins said I said he had been there ten minutes, and I told him then that Mr. Collins did not [fol. 175] ask and I hadn't told him such.

Q. Did you tell what time you thought your husband came in?

A. Yes, I told him I was relaxing and I thought it was between 5:30 and 5:45, somewhere in that neighborhood.

Atty Carter: That's all.

Recross examination.

By County Attorney, Frank O. Wynne, Jr.:

Q. Do you know when the defendant—you say that you know now when he came home—did he come in his automobile; do you know that?

A. I didn't get up to look.

Q. Had the automobile been at your house that afternoon?

A. No, it had not been at my house that afternoon, prior to the time I went in to relax.

Q. Whether he came to the house in the automobile, you do not know? When the police came there, was the automobile there?

A. Yes, it was.

County Atty: That's all.

(Witness excused.)

Atty Carter: The Court please, I would like to take a witness out of turn who wants to leave, a character witness. I know it is improper at this time before we had the defendant, but he wants to leave.

District Atty: It's all right.

Rev. B. H. Martin, Sr., witness for and on behalf of the defendant, being first duly sworn, testified as follows:

[fol. 176] Direct examination.

By Attorney Jawn Sandifer:

Q. Rev. Martin, would you state your name?

A. Rev. B. H. Martin, Sr.

Q. Rev. Martin, do you have a church?
A. Yes.
Q. Where is the church located?
A. Bethel, Mound Bayou, Mississippi.
Q. Do you know the defendant, Aaron Henry?
A. Yes.
Q. How long have you known Mr. Henry?
A. Approximately nine and a half years.
Q. Now, on March 3rd, 1962, did you know Mr. Henry at that time?
A. Yes.
Q. Have you known him in the community of Clarksdale during the period of time that you have known him?
A. Yes.
Q. Do you know what Mr. Henry's reputation is for morality and his character?
A. Yes.
Q. Have you formed any opinion as to what—

County Atty: Object to his opinion.
Court: Sustain the objection.

Q. Have you discussed his character and reputation—

County Atty: We are going to object to that, your Honor.
Court: Sustain the objection.

Q. What is his character as you know it?

County Atty: For what?

Q. Morality.
A. As far as I know he has been a gentleman and he is [fol. 177] morally fit in the community, because he served—

County Atty: Objection—there is only one answer.
Court: Sustain the objection.

Q. It is good or bad?
A. Good.

Atty Sandifer: Your witness.

County Atty: No questions.

(Witness excused.)

VERA PIGEE, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Robert Carter:

Q. Did I ask you to perform a certain task—

District Atty: Objection as to what he asked.
Court: Sustained.

Q. Pursuant to my request, did you clock the time between the intersection of 61 and 49 and the bus station at Shelby, Mississippi?

A. Yes, I did.

Q. Would you just say what you did?

A. Well, I checked the time and mileage. We traveled sixty miles an hour—

Q. When?

A. When we were on the highway this morning. From Clarksdale to the police station in Shelby, it took us thirty minutes to drive and it is twenty-two miles.

Q. You were traveling at what speed?

A. Sixty miles on the highway, and when we passed through the small towns we had to cut down to thirty and in some instances forty-five miles per hour.

[fol. 178] Q. Well, where you could travel sixty miles an hour, you traveled it, did you not?

A. I did.

Q. And where you had to limit your speed, you limited it to that required and then resumed it?

A. Yes.

Q. You said it was twenty-two miles from the intersection.

A. Right.

Q. And it took you at that rate of speed you traveled thirty minutes.

A. That's right.

Cross examination.

By District Attorney, Hoke Stone:

Q. What was that testimony?

A. The testimony was that I left Clarksdale, Mississippi, this morning at the intersection of 61 and 49 traveling south on highway 61 at the rate of speed of sixty miles per hour when it was permissible; however, in some instances there were traffic jams and we would lose time; we could not do sixty just straight on through. It registered on a 1960 Impalla twenty-two miles and thirty minutes.

Q. Twenty-two miles on the speedometer?

A. Yes.

Q. Do you know anything about this case—the facts of this case?

A. I was testifying as to what I had done this morning.

Q. You heard Mr. Collins' testimony, didn't you?

A. Part of it—he wasn't talking loud enough where I could hear much he said.

[fol. 179] (Witness excused.)

Thomas H. Pearson, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Robert Carter:

Atty Carter: Your Honor, we would like to examine this witness as a hostile witness.

District Atty: We don't any reason why he should be a hostile witness—a man with a high reputation and County Attorney in Coahoma County.

Court: Motion is overruled.

Q. Mr. Pearson, you are the County Attorney for Coahoma County?

A. Yes.

Q. How long have you held that position?

A. Held that position from 1952 through 1955 and was out of office for four years, and took office again in 1960.

Q. Now, you took some testimony in connection with this case on March 3.

A. I did.

Q. Would you mind telling us who you questioned and who was present?

A. Best of my recollection, I questioned Sterling Lee Eilert, Aaron Henry, Clifford Smith, Noel Henry.

Q. You took their testimony down on a tape recorder?

A. I did.

Q. All four of them?

A. I did.

Q. Who was present when you questioned Eilert?

A. Mr. Collins and Mr. Kincaid I feel sure were present. [fol. 180] Q. Who was present when you questioned the defendant?

A. Best of my recollection, the same two gentlemen were present during the time I questioned each of the four mentioned parties. For a very few moments during the questioning, Mr. Manuel Nassar and another officer from Shelby were in the room, but not during the entire questioning of anyone.

Q. Was the warrant under which the defendant had been arrested, was that a warrant out of Coahoma County or Bolivar County?

A. I do not have the warrant and from my recollection I have not seen the warrant--I could not answer that question.

Q. When you started making examinations were you told something about the case by somebody, or how did you get involved in examining them?

A. At about quarter of 8:00 on that night, I and my wife were preparing to leave home with another couple to go to a social engagement, at which time I received a phone call from the Chief of Police advising that Aaron Henry was in custody on a disturbing the peace or disorderly conduct charge, and he felt that I should come down. I did go to the police station and talk to the parties whom I have already mentioned.

Q. When did you find out that this charge was a charge originating out of Bolivar County?

A. After I arrived at the police station and after I had questioned all the witnesses.

Q. After questioning all the witnesses?

A. That's correct.

[fol. 181] Q. At what point did you realize that the offense charged was in Bolivar County?

A. I would say after I talked to all the witnesses, because my purpose in interrogating all the witnesses was to ascertain whether or not any offense had occurred in Coahoma County.

Q. Before you questioned the defendant, you did not look at the warrant to see on what he was being held?

A. I do not recall looking at the warrant. I hardly think the warrant would have been indicative of where the offense had occurred anyway.

Q. If the warrant under which Henry was held signed by the Justice of the Peace, J. E. Rowe,—is there any J. E. Rowe, Justice of the Peace, in Coahoma County?

A. I know of none.

Q. Do you know of any in Bolivar County?

A. Not personally.

Q. But you now know that there is a Justice of the Peace, J. E. Rowe, in Bolivar County?

A. There must be; they all talk about him, and you all say the papers are signed by him.

Q. Now after you had discovered that there was no offense committed in Coahoma County, what did you do with the evidence that you obtained?

A. After I had satisfied myself that no official action was desirable or necessary of me as the prosecuting attorney, I took my little machine by my office and left it there and went to my social engagement.

Q. The testimony that you secured on the machine, did you at any time make that available to the officials of Bolivar County?

A. At one time Mr. Wynne and Mr. Stone came by my [fol. 182] office and wanted to listen to the machine, and I permitted them so to do.

Q. You still have the machine in your custody?

A. No, not at this time.

Q. I mean except for the fact that it is at present under the custody of this Court. Other than that, you had the machine in your custody?

A. No.

Q. When did it part your custody?

A. About a month ago.

Q. To whom did you give it?

A. Mr. Stephenson with Office Supply Company, formerly with Office Supply Company.

Q. When was it returned to you?

A. You talking about the machine or the tape?

Q. The tape. I'm only talking about the testimony.

A. Mr. Stephenson had the tape and was supposed to keep it for me and some way it got over to Oxford, Mississippi, so I was advised by Mr. Stone, and Mr. Stone picked it up over at Oxford, Mississippi, a couple of days ago, so I am advised.

Atty Carter: No further questions.

Cross examination.

By District Attorney, Hoke Stone:

Q. This recording machine that you refer to, was it your personal property at the time?

A. At the time, I had it on a trial basis from the Office Supply Company.

Q. You permitted it to be returned to Office Supply Company; is that right?

A. That's right.

[fol. 183] Q. And the tape went with it?

A. Right. The tape was supposed to have been taken off and left, but it was not, and Mr. Stephenson took it with him, too.

Q. You permitted Office Supply Company to take it back—the machine?

A. Yes, sir.

Q. And as to where it went, and whose hands it got into after that, and as to how it got back here, you have no personal knowledge?

A. None.

Q. You have heard this tape played back here, I presume?

A. Yes, sir.

Q. You recognize it as being the testimony that you took down?

A. Yes, sir.

Q. One matter of refreshing your memory—you mentioned that you allowed me and Mr. Wynne, I believe, to hear the tape a few days after this occurrence. Was that not Mr. Wynne and some other officer instead of me—immaterial but Mr. Collins, Mr. Ben Collins?

A. It could have been.

Q. This questioning that you did and your being down there was at the request of Mr. Ben Collins, who had the defendant in custody; is that correct?

A. Well, it was after he had advised me that Henry was in jail on a charge, and after I had been advised that something of a criminal nature had taken place, and after talking with him, it became more obvious that it needed to be looked into.

[fol. 184] Q. And you did it in your capacity as County Attorney of Coahoma County; is that correct?

A. Yes, sir.

District Atty: No further questions.

(Witness excused.)

Atty Carter: Your Honor, I have a witness that I would like to call who doesn't know anything about the facts of this case and was to establish a particular fact, and I have just been advised that he is in the courtroom. He has not been sworn. I do not want any witness to violate the rules—just want to make it clear.

County Atty: It's all right.

Court: No objections.

WILLIE SINGLETARY, JR., witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Robert Carter:

Q. Will you give your name, occupation, and residence for the record? Speak as loudly as you can.

A. Willie Singletary, Jr., 638 Lincoln, Clarksdale, Mississippi. Occupation—mechanic.

Q. Do you know the defendant, Aaron Henry?

A. I do.

Q. Have you ever done any repairs on his car?

A. I have.

Q. Have you repaired his cigarette lighter recently?

A. I did.

Q. When did you do that?

A. January 27.

[fol. 185] Q. Now, tell us what you did.

A. I put a complete cigarette lighter in.

Q. A complete new cigarette lighter on January 27?

A. Yes.

Q. How long would a new cigarette lighter last, if you have done your job right?

A. It's pretty hard to tell about a new cigarette lighter; sometimes you get one that stay in all right; sometimes get one that will stay in six or seven months.

Q. As of January 27, Mr. Henry's car had a complete new cigarette lighter in it and working properly?

A. It did.

Atty Carter: Your witness.

Cross examination.

By District Attorney, Hoke Stone:

Q. Willie, on January 27 something was wrong with the cigarette lighter?

A. Yes, sir.

Q. You say it is problematic as to how long one will last?
A. Yes, sir.
Q. Possibly something caused the first one to go bad?
A. Yes, sir.
Q. You haven't had an occasion to work on it since then?
A. No, sir, no more than put it back together.
Q. You have no knowledge as to whether that cigarette lighter was working on March 3, 1962, or not; do you?
A. No, sir, I don't.
Q. Could have gone bad; it could have been still good.
A. Yes, sir.

[fol. 186] Redirect examination.

By Attorney Robert Carter:

Q. Did you examine the cigarette lighter after March 3?
A. No, I didn't.
Q. You haven't looked at the cigarette lighter since March 3?
A. One of the boys at the shop looked at it, but I wasn't there.
Q. You haven't seen the cigarette lighter since January 27?
A. Yes, I have seen it. When he brought the lighter there one of the boys had it in a box—Dr. Henry brought it there.
Q. Which cigarette lighter?
A. The first one that I put in. Then he came back there and told me to put the cigarette lighter back in, and I put the cigarette lighter back in myself after January 27.
Q. You have me a little confused. You put the new cigarette lighter into his car on or about January 27?
A. That's right.
Q. But after March 3, you did not see or work on his cigarette lighter?
A. After March 3, I did. See, after March 3, Dr. Henry brought it by the shop and one of the boys looked at it. In other words, they took the lighter completely out—they said it had been jimmied with. I wasn't there at the time. They had it in a box—

Q. In other words, you saw the cigarette lighter on March 3 out of the car, and you got a new cigarette lighter in its place.

A. That's right.

Atty Carter: That's all.

[fol. 187] (Witness excused.)

CHARLES C. STRINGER, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Robert Carter:

Q. Would you give your name?

A. My name is Charles C. Stringer.

Q. Occupation and residence.

A. Funeral Director, Clarksdale, Mississippi.

Q. How long have you been in Clarksdale?

A. I've been in Clarksdale since 1939.

Q. How long have you known the defendant?

A. Since 1939.

Q. Did you have any occasion to be in the presence of the defendant on March 3?

A. I was.

Q. Would you mind telling us when and where?

A. The afternoon of March 3 I went home to lunch and leaving home I stopped within the block where I live to have my automobile washed, and while parked there, I walked into the office of the Delta Burial Corporation, and I guess I was there around five minutes—five or ten minutes, and in conversation with several other friends. While there in conversation with friends, Mr. Henry came in, and we talked there for about ten minutes, and I left and went back to my office.

Q. What time do you estimate that to be?

A. I judge that to have been somewhere around 5:00.

Q. Is this Mr. Melcher's office?

A. He is the President of Delta Burial Corporation; it is his office.

[fol. 188] Q. Who was there?

A. When I walked into the office, President McLaurin of Coahoma Junior College, Mr. Collins, Mrs. Johnson, who is the secretary of the Delta Burial Corporation.

Q. Did the defendant come in after you got there, or was he there before you got there?

A. He came in after I got there.

Q. Did anyone else come in while you were there?

A. Rev. Johnson came in while I was there and Mr. Melcher.

Q. You estimate the time to be about 5:00, and I understand you to say that you stayed about ten minutes.

A. Well, I probably stayed a little longer than ten minutes, but I was in the presence of the defendant about ten minutes.

Q. Did you leave him there?

A. Yes, I did.

Q. You would estimate that you left his presence about what time?

A. Well, I judge it to have been about ten minutes after 5:00.

Q. Let me ask you this. Did you notice or do you recall any articles of clothing or description of articles of clothing the defendant was wearing at the time you saw him?

A. I do.

Q. Will you tell us what he was wearing?

A. To the best of my knowledge, he had on a black coat, a white shirt, and a dark tie.

Q. He had on a tie?

A. He did have on a tie.

Q. You are positive of that?

A. I'm positive.

[fol. 189] Q. Do you recall what kind of trousers he had on?

A. I don't remember the exact color of the trousers, but they were dark trousers.

Q. Let me ask you this, Mr. Stringer. Do you have any idea how long it would take you to drive from Mr. Melcher's office to the intersection of 61 and 49 on the highway?

A. I guess, considering all the stops and all, it would take five to ten minutes.

Q. Do I understand you to say that you have known the defendant since what time?

A. Since 1939.

Q. Has there been indication by the defendant that you know of, seen, or heard that would give you the idea that the defendant was attracted to men?

A. None whatever.

Atty Carter: That's all.

Cross examination.

By District Attorney, Hoke Stone:

Q. Charles, what intersection are you talking about?

A. The intersection of 49 and 61.

Q. Is that direct from the funeral home, Delta Burial Association?

A. That's right.

Q. Approximately five minutes?

A. Five or ten minutes.

Q. This McLaurin that you are talking about—have you been here all the morning?

A. I just arrived.

Q. Then you don't know who took the stand this morning, but McLaurin is the superintendent or principal of the Junior College.

[fol. 190] A. President of the College.

Q. Now you mention Reverend who?

A. Reverend Johnson.

Q. That's Viola Johnson's husband, John Melcher's secretary?

A. He is the husband of Mrs. Johnson.

Q. You were there when he got there; is that correct?

A. When Rev. Johnson arrived?

Q. Yes.

A. I was.

Q. You were there when he left?

A. I was there when he left.

Q. He and his wife left?
A. He and his wife left.
Q. And you were there when John Melcher arrived; is that correct?
A. I was.
Q. You are not particular positive about the dress of this man—been a month or two ago.
A. Which man?
Q. Aaron Henry.
A. Oh, I'm positive about the coat he had on.
Q. He was well dressed?
A. He was well dressed.

District Atty: No further questions.

(Witness excused.)

Atty Carter: Your Honor, we are at the point now where we would like to put on the defendant, but a problem as to order—as you know, we have not been able to finish taking the evidence down on the tape recorder. Now it is ten minutes to twelve—
[fol. 191] Court: You have any quick witnesses?
Atty Carter: No. We are through unless we get the order—since it is so close to the noon hour, I was wondering if we could recess—
Court: What about starting back at 1:15? Would that give you enough time?
Atty Carter: I would think so.
Court: Take a recess until 1:15.

(Recess at 11:55 until 1:15 P. M.)

(Court reconvened at 1:15 same day.)

Jury in Box

Court: Call your next witness.

R. Jess Brown, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Robert Carter:

Q. Give your name.
A. R. Jess Brown.
Q. Occupation?
A. Lawyer.
Q. Where do you reside?
A. I reside in Jackson, Mississippi.

County Atty: Your Honor, we believe that this Jess Brown is acting as counsel for the defendant, and if he is going to be used as a witness, he should withdraw at this time from the case and take no further part in this case.
[fol. 192] Atty Carter: I am at somewhat of a disadvantage because I don't know what the law is in regard to this and what the practice is in the State of Mississippi. I would want Jess Brown not to testify in regard to any facts in this particular case, only in reference to an investigation that he had to determine the whereabouts of Mr. Henry and what happened.

County Atty: If he is going to used as a witness, and being counsel for the defendant, he should withdraw and vacate at this time and not participate any further.

Court: Do you have a case to go on?

County Atty: I can find one, but I thought the Court well knew that was the rule.

Court: Well, I'm not just exactly sure what it is.

County Atty: Now, I might get a recess and find it—I thought the Court was familiar with that, because I know I have had to do it myself on several occasions.

Court: We don't want a recess.

County Atty: Well, let him go on and testify.

Q. Did you have an occasion on or about March 3 to make any investigation or inquiry in regard to this case?
A. I did.
Q. Will you tell us what you did?

A. On the morning of March 3, 1962, I had an occasion to come to Cleveland, Mississippi, to present a bond for the release of the defendant.

District Atty: Your Honor, we are going to object to all of this: In the first place, it is immaterial, and in the second place, it is irrelevant. I just honestly don't see where there—

[fol. 193] A. I'm sorry, it was on March 4.

Atty Carter: Are you sustaining the objection as to his testimony as to what he did on March 4?

Court: About his coming to Cleveland to make bond.

Q. When you came to Cleveland on March 4, did you or did you not have any conversation with the County Attorney with reference to this case?

A. I did.

Q. Did you have conversation with Mr. Wynne?

County Atty: Object to any conversation he had with me.

Court: Sustain the objection.

Atty Carter: The purpose—well, I don't want the jury to hear this. I don't think they ought to hear this.

Court: Let the jury go out.

Jury Retires

Atty Carter: We have contended that the arrest of the defendant in this case and that the process in this case is irregular, invalid, and the purpose of this witness' testimony be connected up in terms of proof established.

Court: What is going to be the substance of his testimony?

Atty Carter: The substance of his testimony will be that he sought to secure from Mr. Wynne to find out what the charge was, what the affidavit was. He talked to Mr. Wynne, and Mr. Wynne said he did not have the affidavit, that it was in the custody and possession of authorities at Shelby, that subsequently on the Monday, the following day, he called the Justice of the Peace, Justice Rowe, and

asked him had he issued a warrant for the arrest of Henry and did he sign an affidavit charging Henry, and Mr. [fol. 194] Rowe indicated that he knew nothing about it.

Court: I think that part would be competent.

District Atty: What Mr. Wynne has said to this man about what Judge Rowe has said to him is competent? That's double heresay.

Court: That's not the way I understand it.

Atty Carter: I didn't say anything about what Mr. Wynne said that Mr. Rowe said. It was what Mr. Wynne told Mr. Brown.

District Atty: There is no conversation between Mr. Rowe and Attorney Brown, is there?

Atty Carter: There was. That's what he said.

Court: In other words, he is showing what he did about the affidavit. Let the jury come back.

Jury Back in Box

Q. On March 4, you were here in Cleveland?

A. I was in Cleveland on March 4, which was on a Sunday.

Q. Did you talk to the County Attorney, Mr. Wynne, about this—

County Atty: If the Court please, we would like the record show that we object to all this testimony that this man gives.

Court: Let the record show.

A. I did.

Q. Would you give the substance of the conversation?

A. I inquired of Mr. Wynne whether or not he had the affidavit, or the original affidavit, pursuant to the arrest of Aaron Henry, the defendant in this cause.

Q. The same Mr. Wynne, County Attorney, here?

A. The same Mr. Wynne.

Q. The same Aaron Henry, the Defendant in this case?

[fol. 195] A. The same one, yes.

Q. About the same case?

A. About the same case.

Q. And what was his answer?

A. Mr. Wynne told me at the time, this was on Sunday morning on March 4, that he did not have the affidavit with him at the time, and that affidavit was in the custody of Mr. Rowe the Justice of the Peace at Shelby. He further said, however, that it would be necessary for him to amend that affidavit.

Q. Did you subsequently talk to Mr. Roe the Justice of the Peace?

A. Yes, I did.

Q. Did you talk to him at Shelby?

A. I talked to him by telephone to Shelby. In other words, I made a call to Shelby.

Q. When did you call?

A. I made the call—

District Atty: I'm going to object to any telephone conversation.

Court: Who is the telephone conversation with?

Atty Carter: Between Justice Rowe and this witness.

Court: All right, ask the question and I will rule.

Q. Did you talk to the Justice of the Peace, Rowe?

A. I did.

Q. About this matter?

A. I did.

Q. What was the substance of that conversation?

A. I inquired—

Q. When did you talk to him?

A. I talked to him on the 5th—

District Atty: Did your Honor rule on this telephone conversation?

[fol. 196] Court: Yes, I ruled on it. Go ahead.

A. I talked to Mr. Rowe on the 5th day of March, 1962.

Q. What was the substance of the conversation?

A. I inquired—

District Atty: Your Honor, I don't like to be pickaunish about this thing, because this case has gone on a long time, but this is the rankest heresay testimony I have ever heard. It doesn't come within any of the recognized ex-

ceptions to the heresay rule. This is heresay testimony. Of course, we take the position that it was incompetent because he wasn't tried on the affidavit. He was tried on the affidavit entered into and signed by Mr. Wynne before Judge Rowe shortly before the trial on the 14th. That's the affidavit that's in the record.

Court; Overruled.

Q. Would you give the substance of your conversation with Justice of the Peace, Rowe?

A. Inquired of Mr. Rowe—first I identified myself, and that I was representing the defendant, Aaron Henry, in this cause. After doing that, I inquired of Mr. Rowe whether or not he had in his possession the affidavit pursuant to the arrest of Aaron Henry, and that I had been informed by Mr. Wynne that he did have it.

Q. What answer did Mr. Rowe give you?

A. Mr. Rowe informed me that he had no knowledge of the arrest of Aaron Henry and it didn't come before him on that Saturday of the 3rd.

Q. Did he inform you wether he had or had not signed the affidavit?

A. He also said at that time that he had not signed an affidavit and knew nothing about it.

[fol. 197] Atty Carter: That's all.

Cross examination.

By County Attorney, Frank O. Wynne, Jr.:

Q. Now, when you talked to me, that was early on Sunday morning after this happened that night; is that correct?

A. Yes, approximately 8:00 or 8:30 in the morning.

Q. You asked me if I had the affidavit which was charged against him; is that correct?

A. That's correct.

Q. And I believe I told you I did not have it, and if you remember, I told you—of course, I hadn't been to Shelby, I knew nothing about the case, I was called out that morning. I told you that I assumed it was in Shelby,

Mississippi, in the Justice of the Peace office; is that correct?

A. I don't recall that you said you assumed it was there; I recall you saying it was there.

Q. I couldn't possibly have said it was there when I had no personal knowledge of it myself. I show you this affidavit here. Is that not the affidavit which was made out by me on the 14th day of March just before the defendant was tried in the Justice of the Peace Court, and, wasn't that the affidavit that the defendant was arraigned on in the Justice of the Peace Court, and wasn't that the affidavit that he was tried on?

(Affidavit examined by witness.)

Atty Carter: I think, your Honor, the record speaks for itself.

Court: This is cross-examination. Go ahead.

Q. Is not that true?

A. This is the affidavit, according to my recollection, that he was tried on.

[fol. 198] Q. And I gave you a copy, did I not?

A. On that day.

Q. I gave you a copy of the affidavit before the man was tried?

A. That's correct.

Q. Did you or did you not make any objections on trial before Judge Rowe as to anything about the affidavit?

A. I did not.

County Atty: No further questions.

(Witness excused.)

Atty Carter: We would like to recall the complaining witness.

Court: For what purpose?

Atty Carter: The purpose of recalling the complaining witness is to make inquiry of him in verification of statements he made that were recorded on the tape recorder.

County Atty: Is it a full statement?

Court: Let me see the statement. Recall the witness.

County Atty: Your Honor, I would like to make this

observation. He listened to that statement yesterday afternoon and made notes and cross-examined him on a better statement than he's got in his hand.

Court: The purpose of this is to ask him about that statement. He can ask him whether those questions were asked and whether those answers were given—that and that alone. Recall the witness.

STERLING LEE EILERT, witness for and on behalf of the state, recalled for further

Cross examination.

By Attorney Robert Carter:

[fol. 199] Q. Now, Sterling Eilert, I'm going to ask you about a statement that you made in Clarksdale, and I'll ask you to read the question and answer and ask you whether or not the question was given you and you made that answer. Question: Have you ever been picked up by the police in Memphis? Answer: I have no police record, but I was picked up for buying beer in places. Some of the boys I was associated with who rode the yard picked me up, and I was taken to Juvenile Hall for disorderly conduct and put on probation, but no record was made of it. Was that question asked you and you gave that answer?

A. Yes, that's true.

District Atty: Your Honor, we object to that because it is not material to this case. We ask that he confine his questions to matters that are material to this case and not everything else in the world.

Court: I think so.

District Atty: You cannot go into re-cross-examination on collateral matters and ask that that be stricken from the record.

Court: It's already in the record. Go ahead.

Q. Question: What type looking was this negro that picked you up? Answer: Well-dressed. Was that question asked you and that answer given?

A. I believe it was.

Q. Question: Did he have on a suit? Answer: No, a grey sport and slacks. Was that question asked and the answer given?

A. Yes, I believe I did say that.

Q. Did he have on a tie and what color shirt? Answer: Sport shirt, solid color; no tie, slacks were dark brown or cream brown. Was that question asked of you and that answer given?

[fol. 200] A. Yes, I remember that.

Q. Question: What time were you picked up in Clarksdale? Answer: Between 5:00 and 6:00 P. M. Was that question asked and that answer given?

A. Yes.

Q. Question: Was it dark when you left Clarksdale? Answer: No, it was daylight and light when we got to Shelby, but started to get dark when I was in the police station in Shelby. Was that question and answer given?

A. If it was on the tape, it was right.

Q. Question: When you left Clarksdale you went straight to Shelby, and about how fast did the man drive from Clarksdale to Shelby? Answer: About forty miles an hour. I wondered why he drove so slow in that big car. Was that question and answer—

A. Yes, I said that.

Q. Question: Did you ask what this man's name was?

A. No, I didn't.

District Atty: Wait a minute; he's just asking

Atty Carter: I'm merely reading questions.

Q. Question: Did you ask what this man's name was? Answer: When I described him to the police officers in Shelby, they knew who I was talking about right away. Said he was associated with the NAACP or something. I do not know him personally. Was that question and answer given?

A. No.

Q. If that's on the tape, you didn't say it?

A. It's on the tape, but you just left some words out.

Atty Carter: That's all.

[fol. 201] Redirect examination.

By County Attorney, Frank O. Wynne, Jr.:

Q. Now, Sterling, when you were in the police department—let me see that statement—I notice this statement that there is just a page and a fraction more. When you made this statement to the police in Clarksdale, was it a very lengthy statement or not?

A. Yes, sir. It took a little while to say it all.

Q. Did you give a short statement like this—just one page and that little bit of a page?

Atty Sandifer: Your Honor, I object to the question. The proper foundation has not been made to show whether this witness has any knowledge as to how long or short this statement was.

County Atty: I'll do this, your Honor; I'll let the witness look at the statement.

(Witness examines statement.)

Q. Now, Sterling, would you say that this statement here constitutes the full and exact statement that you gave to the police in Clarksdale, Mississippi?

A. Just about, but some of the words that make the sentences meaningful are not in it.

Q. And this statement you made in Clarksdale was right after this happened on March 3?

A. Yes, sir, it wasn't more than an hour.

County Atty: I have no further questions.

Court: Call your next witness.

(Witness excused.)

AARON HENRY, the defendant, being first duly sworn, testified in his own behalf as follows:

[fol. 202] Direct examination.

By Attorney Robert Carter:

Q. Would you give your name?
A. My name is Aaron E. Henry.
Q. Occupation?
A. Pharmacist.
Q. Where do you live?
A. 4th Street Drug Store, Clarksdale, Mississippi.
Q. How long have you lived there?
A. All my life.
Q. How long have you been a pharmacist?
A. Since 1950.
Q. Are you married?
A. Yes.
Q. How long have you been married?
A. Since June 11, 1950.
Q. Are you living with your wife at the present time?
A. Yes.
Q. Were you living with your wife on March 3, 1962?
A. Yes.
Q. Have you had more than one marriage?
A. No.
Q. Do you have any children?
A. Yes.
Q. How many?
A. One.
Q. Girl or boy?
A. Girl.
Q. How old is she?
A. Approaching eleven.
[fol. 203] Q. You know what you are charged with?
A. Yes.
Q. On the date of March 3rd, I would like for you to tell the Court and jury—since the morning hours do not seem to be important, I would like for you to account for your time from 3:00 till the time you were arrested.

A. At the hour of 3:00 I was on duty at the 4th Street drug store checking in a drug order, waiting on customers, and answering the telephone, the usual duties of one employed in the store. This continued from 3:00 until around the hour of 4:30. At about that time Mr. Smith, the other pharmacist in the store, came on duty and was relieved by him when he came. I got out of the store about 4:45. I left the store about 4:45, and proceeded down to the Delta Burial Corporation where I had left my car about 10:00 that morning to be washed.

Q. Is the Delta Burial Corporation the establishment run by Mr. Melcher?

A. Yes, it is. Upon arriving at Delta Burial I went inside of the office, and there was Mr. McLaurin, Mr. Stringer, and Mrs. Johnson, and some other people. Those were the only three that I recognized at the moment; however, Rev. Johnson either was there or came in shortly after I was there, but soon after I came into the office he and Mrs. Johnson prepared to leave, and I remained at Delta Burial in discussion with Mr. McLaurin and Mr. Stringer for a few moments, then Mr. Melcher came in, and after Mr. Melcher came in, the whole conversation began anew. We were there in conversation with Melcher, Stringer, and McLaurin. Stringer left about ten minutes after Melcher came, and then McLaurin, Melcher, and I continued the conversation until sometime around [fol. 204] 5:20 to 5:30. I left there before 5:30.

Q. Where did you go from there?

A. I went directly home.

Q. Was there anyone at home when you arrived?

A. Yes. Miss Turner and Mr. Wallace and my daughter, Rebecca, were in the front room listening to a T. V. program. My wife was in the back bedroom lying across the bed.

Q. You estimate the time you arrived at about what time?

A. About 5:30 to 5:35. Leaving Melcher's office about 5:20 on Saturday, it would take a little time to weave through town from downtown from where the store is to where I live. I would estimate about ten minutes.

Q. Now, what did you do when you got into the house?

A. When I got into the house, the first thing I did was to pull off the top clothing that I had on; went into the bathroom and used the toilet, and then I went into the kitchen to heat the food that had been left—dinner is served at our place at about 4:30, and if I am not over an hour late for dinner I usually get by with it—and going into the kitchen and lighting the fire, I heated my food, dished it up and ate it. When I had finished eating, there was some type of jazz record on the T. V. program, and Rebecca, who is somewhere ten and eleven, is quite a twist artist—

Q. Your daughter?

A. Yes. She insisted that I go into a twisting session with her—it's a dance—and we performed that for a little while, and then I went into the bedroom, which at this time I am pretty sure was 6:00. My wife was lying across the bed, and I had a board meeting on the Federated Council Organization coming up at 7:30, and I went into the bathroom and told Mrs. Henry that I had about an hour and half to relax, and I insisted on her getting into [fol. 205] the bed—she was lying across the bed—and when she got into the bed that meant there was space for me into the bed, too. About 6:00 I set the clock to alarm at 7:30 and got into bed.

Q. Did you go to sleep?

A. Yes.

Q. How long did you sleep?

A. I would say going to bed at 6:00, I was awakened at about ten minutes till 7:00. Rebecca, our daughter, came into the bedroom where we were, and she said, "Daddy, they are flashing lights outside." Well, I was trying to keep her from being unnerved by the lights. I said, "Well, they are their lights, let them flash them, that's okay." Of course, she was afraid, and it turned out it was the policeman outside flashing lights, and about ten minutes after she was in the room—her mother and I both remained in bed after she had made this announcement—and then a knock came on the door, and Mrs. Henry got up to answer the door, and in a few minutes she came back

into the bedroom, and she told me that there was a policeman up front that wanted to speak to me, and she reached into the clothes closet and threw me a robe, and I put the robe around me and went up front and there was the Chief of Police, Mr. Ben Collins, of my city, and he told me he had a warrant for my arrest, and when he told me that, I reached for it, and he handed me the warrant. It had my name on it and it did say "warrant" on the top, and there was no need to argue about it. I submitted myself to him in his custody.

Q. I will show you the warrant in this file. Does this look like the warrant that was served on you?

(Warrant shown to defendant.)

A. No, it's not.

[fol. 206] Q. Let the record show that the warrant which I showed to the defendant, which he said was not the warrant served on him, is the warrant that is in the file of this case, the only warrant we have seen in this case. Then what happened?

A. When the Chief told me that I was under arrest, well, I knew him and I said, "All right, Chief, I will be with you in just a few minutes as soon as I can change to street clothes." I went back into the bedroom to dress, and when I looked up, he was standing behind me watching me dress so I put on my clothes, then I told him I wanted to make a phone call, and I made two phone calls, and after the two phone calls, I told him I was ready to go with him.

Q. Where did he take you?

A. Before we left the house, I asked him what I was being arrested for and he told me misconduct, and I asked him where was it supposed to have happened, and he said in Mound Bayou. As we were leaving out of the house I asked Mr. Collins what time was the incident supposed to have happened, and he answered my question by asking me one, "Where were you between the hour of 5:00 and 6:00," and I replied that between the hour of 5:00 and 6:00 I had been to the drug store, Mr. Melcher's office, and home.

Q. You were then placed under arrest, taken to the police station. Were you put in jail?

A. Yes, sir, I was put in jail.

Q. In Clarksdale?

A. In Clarksdale.

Q. Were you questioned?

A. Upon immediately arriving at the jail I was not.

Q. How long after arriving were you questioned?

A. About thirty minutes.

Q. By whom?

[fol. 207] A. By Attorney T. H. Pearson.

Q. Anybody else?

A. I don't recall anybody else around the table that I knew except him, however, there were several male white adults around.

Q. Did you see the complaining witness down at the police station?

A. I do not recal' having seen him. If he was there, I didn't recognize him.

Q. Have you ever seen the complaining witness before?

A. Yes, I saw him in Shelby on March 14, I believe.

Q. Had you ever seen him anytime before that?

A. Not to my knowledge.

Q. Had he ever been in your car?

A. Not to my knowledge.

Q. Going to your car—how many ash trays are in the front of your car?

A. There are two.

Q. I want to show you a picture—do you recognize that?

A. Yes, sir.

Q. What is it?

A. That's a picture of the dash in the interior of the car.

Q. Your car?

A. Yes.

OFFER IN EVIDENCE

(Photograph examined by State Attorneys.)

Atty Carter: We would like to offer this in evidence as defendant's exhibit number one.

(Marked "Defendant's Exhibit D-1" by the Reporter.)

[fol. 208] Q. Is the full front of the car shown?

A. No, there is some extension to the right that is not shown.

Q. Are both ash trays on it?

A. No, they are not.

Q. Where is the ash tray that is not shown on the picture?

A. Near the right door on the dash.

Q. Near the right door?

A. Yes, sir.

Q. In driving a car, Mr. Henry, you have an ash tray close to your right; do you not?

A. Yes, there is an ash tray just to the right of the steering wheel.

Q. If you opened an ash tray with someone riding in your car, is it possible for you as a driver to reach—how would you reach the two ash trays? There is one close to you and one almost on the other side of the car. The one that is to your right—can you open that while driving the car?

A. Yes, with ease.

Q. And the one that is further to the right?

A. You can hardly reach it and drive. It is on the extreme other side.

Q. Getting back to the statement that you made. You were kept in the Clarksdale jail and you made a statement.

A. Yes, sir.

Q. What you said on the witness stand, is substantially what you said at the police station?

A. Yes, sir.

Q. Were any of the witness, your wife, your partner, or your employee, Smith, or Eilert examined in your presence?

A. No, they weren't examined in my presence.

[fol. 209] Q. Were your car and effects searched—were you there when the police looked into your car?

A. If they looked into the car before I was arrested, I was in the house, but if they looked in after I was arrested, I was not there.

Q. You were not there in any case.

A. No, I was not at the car.

Q. Did you remain in the jail in Clarksdale?

A. Not overnight.

Q. How did you remain there?

A. In Clarksdale, in jail, during the questioning and all should have taken about an hour.

Q. Then you were taken where?

A. I was released by the Chief of Police to a gentleman that is on the Sheriff's force from Bolivar County. I was told that I was his prisoner, and then he proceeded to handcuff me and put a body chain around my body. I had to submit to it—I objected to it, but—

Q. You were taken in chains?

A. Yes.

Q. You were taken where?

A. I was taken to the station in Shelby, and I asked the man who was driving the car for permission to make a phone call whenever we got to where we were going to stop, and he offered me the opportunity of making the phone call when we stopped at Shelby, and I asked him if that was as far as we were going, and he told me, "No." Well, I didn't want to make the phone call there, because I wanted to make a phone call where ever I was going to be lodged in jail so somebody would know where I was.

[fol. 210] Q. How long did you stay in jail in Shelby?

A. Ten minutes.

Q. And you were let out?

A. No. I was carried from there to the Bolivar County jail here in this building.

Q. And you were kept here how long?

A. Until around 9:00 the following Sunday morning.

Q. The essence of the charge against you, Mr. Henry, is that you have homosexual tendencies; do you?

A. No, sir.

Q. Do you like boys?

A. No, sir.

Q. Do you like white boys?

A. No kind of boys.

Q. On that day did you have on a grey sport coat?

A. I do not own a grey sport coat.

Q. Did you have on a solid color sport shirt?

A. No, all of my shirts are white shirts.

Q. Did you have on any cream brown trousers?

A. No, I had on a pair of dark blue trousers.

Q. When you were taken to the police station, were you dressed the same way you were dressed all day?

A. Well, substantially. During the day in and out of the store on March 3, it was somewhat still chilly in this part of the country, and I have a purple and gold sweater that I put on and took off as I went in and out of the store, however, upon leaving the store about 4:30—I told you we had this board meeting we were contemplating that night, and I wanted to be properly attired afterwards, so I took a black dress coat, and I put it on at that time.

[fol. 211] Q. When that coat is buttoned, can the sweater be seen underneath?

A. No, it's not that big a sweater.

Q. Now, when you went down to the police station, what did you wear?

A. I wore the purple and gold sweater; there was no need for the coat, because I wasn't going to a board meeting now.

Q. Were you on the highway 61 at the intersection of 49 at any time during the day?

A. No, sir, at no time on March 3.

Q. Were you en route between Clarksdale and Shelby at any time during the day on March 3?

A. No.

Atty Carter: Your witness.

Cross examination.

By County Attorney, Frank O. Wynne, Jr.:

Q. I believe you said you left the Delta Funeral Home around the neighborhood of 5:30, as close as you can fix the time; is that correct?

A. Between 5:20 and 5:30; I left a little before 5:30.

Q. And then you proceeded on home; is that correct?

A. Correct.

Q. How did you get to your home? Your home is located just off highway 61 to the north, isn't it? Say you would have to go north to hit the intersection of highway 61 and 49—you would have to travel north two or three blocks and turn left?

A. Well, if you went on the highway, you would.

Q. That's right, that's what I am talking about. How did you go when you left the Delta Funeral Home?

A. This will probably be pertinent. The car was parked [fol. 212] on 5th Street facing the railroad, that's about half block down from the Delta Burial—

Q. I thought you said your car was being washed at Delta Burial.

A. I left the car up there at 10:00 that morning to be washed.

Q. And they drove it a half block away.

A. Yes. After they had washed the car, they parked it out of the way, and getting into the car, I drove toward the railroad, took a left at East Tallahatchie to Fourth Street, proceeded right on Fourth Street to Florida, right on Florida to Seventh, left on Seventh to Page, and then into my carport.

Q. And you say this should have been taking you around ten minutes; is that correct?

A. Yes, about ten minutes.

Q. In other words, you should have reached your home and parked your car under your carport around 5:40 or 5:45, somewhere in that neighborhood, and I believe that carport is on the south side of your home? I don't remember correctly.

A. I can't judge north, south, east, or west, but it is on the highway side.

Q. On the highway side; is that correct?

A. That's right.

Q. What street do you live on?

A. Page Street.

Q. A person driving down Page Street looking at your house, there is nothing there to obstruct their view from seeing an automobile in your carport is there?

A. If he is on Page Street, no.

Q. That's what I am talking about. If he is on Page Street, the street that runs in front of your home, there [fol. 213] is nothing there to obstruct his view of seeing your automobile?

A. That's right.

Q. In fact, I don't believe there is any obstruction from the highway.

A. Yes, it is.

Q. There is something between the house?

A. Yes, a service station.

A. You can see your house from the highway, can't you? If you were looking for your home down along the highway traveling north, you could look to your left and see it if you knew where it was couldn't you?

A. Yes.

Q. And you could see the carport couldn't you?

A. I assume so; I haven't checked that out.

Q. And you say that you got to your home around 5:40 and parked your car in the carport, and to your knowledge, did that car ever leave there?

A. Not to my knowledge.

Q. Until the officers came there to arrest you; is that correct?

A. The car didn't leave then.

Q. That's what I am talking about. Your car didn't leave there, and it didn't leave at that time did it?

A. No.

Q. I believe on direct examination—let's go back there to the arrest at your home. Now your counsel showed you a warrant, and you said this wasn't the warrant.

A. That's right.

Q. I believe you also testified that he handed you a warrant, you saw your name on it, and that was as far as you knew about it. Point out what is different about this one [fol. 214] and the one you saw your name on.

A. The one that I saw with my name on it—my name is on that one, but the other one that he showed me had Sterling Lee Eilert's name on it too,

Q. Sterling Lee Eilert? What would his name be on a warrant? Sterling Lee Eilert wasn't being arrested.

A. What he showed me had—

Q. In other words, you are saying this is not the warrant you were arrested on?

A. Well, let's put it this way—that is not the document he showed when he told me I was under arrest.

Q. All right. And it the Chief of Police at Clarksdale notes on the back that "I have executed within writ by delivering to the within named defendant, Aaron Henry, a true copy of this writ this 3rd day of March 1962, signed B. C. Collins, Chief of Police," that's a mistake on his part.

A. That's a mistake because it doesn't have Eilert's name—

Q. That's not the warrant. If the Chief of Police at Clarksdale made that return on that warrant to that effect, he was wrong? That wasn't the warrant that he showed you.

A. I'm saying exactly that. That was not the warrant that he showed me when he came into my house to get me.

Q. And you say that the warrant he showed you had the prosecuting witness' name on it?

A. Yes, sir.

Q. Do you know whether or not Sterling Lee was locked up in jail?

A. No, I didn't—this might help. When the Chief finally told me that I was being charged on misconduct in Mound Bayou, I immediately suspected a negro complainant, be- [fol. 215] cause Mound Bayou is an all negro town. I never knew anything about Eilert; I didn't know he was white, blue, green, or whatever he might be, and looking at the warrant and seeing this strange name on it, I knew it was somebody I didn't know, had never seen, and I wasn't too concerned about it then, because it certainly didn't involve me.

Q. But you remember that name. Just glancing at it and seeing your name and seeing a strange name that you had never seen before—three names, Sterling Lee Eilert. Eilert is a most peculiar name.

A. That's why I—

Q. And you mean you remember that name was on the warrant just glancing at it?

A. Yes.

Q. Did you see Sterling Lee Eilert at the police station?

A. I don't recall seeing him. The only time that I knew that I was looking at the man, Sterling Lee Eilert, was at Shelby. There were several white males at the police station whom I recognize now.

Q. You've been sitting in the courtroom all morning, and you heard the testimony that you were identified twice and probably the first time you didn't see him that you were identified. You heard that testimony. Then they said the second time that he was brought face-to-face with you, and he identified you at that time.

A. If that's what they said, that wasn't what happened.

Q. Could those officers be mistaken?

A. If they said they brought him face-to-face with me, they are mistaken. What happened, they brought me out of the bullpen into a room where there were several people, and somebody said, "We're not ready yet," and they carried [fol. 216] me back out. Nobody was asked while I was in there, "Is that the man?" Nobody said a word to anybody. They took me out of the room.

Q. Was Sterling Lee Eilert in that room?

A. I don't know. There were several white males there; I don't know whether he was there.

Q. You don't remember whether he was there, but you saw his name on the warrant?

A. Sure, I saw his name on the warrant.

Q. You remember that name, but you don't remember whether—

A. He handed it to me and I looked at it.

Q. You told counsel on direct examination that Police Chief handed you a warrant, and you looked at it and saw that it was a warrant with your name on it and handed it back. You couldn't have had it long—you didn't study it long. Well, we will go on from there. Now, you say you were questioned there at the police station?

A. Yes, sir.

Q. You made no objections to being questioned did you?

A. No, I made no objections.

Q. You were advised your rights?

A. No, I was not.

Q. Did you make two telephone calls before you left your house?

A. Yes.

Q. Who did you notify?

A. I called Mr. Drew and I called Mr. Melcher, and I told them I was being arrested and to meet me at the police station.

Q. Did you ask for your attorney?

A. No.

Q. Did you refuse to give a statement?

[fol. 217] A. No, I gave a statement.

Q. And you told substantially what you told the police—

A. Substantially, yes.

Q. And that is the fact that you were at your drug store on 4th Street from approximately 3:00 to 4:30 checking a drug order.

A. Well, my counsel asked me to begin at 3:00. I told at the police station my entire day from 8:00 that morning.

Q. In other words, you were at your drug store until approximately 4:30; is that correct?

A. Well, later than that. Mr. Smith came back at about 4:30; I left about ten or fifteen minutes after he was there.

Q. You must have left about 4:45.

A. Yes.

Q. And on leaving there you went to the Delta Funeral Home; is that correct?

A. Yes, sir.

Q. And how long did it take you to get to the Delta Funeral Home?

A. A matter of about five minutes.

Q. In other words, you should have reached there about 4:50 or 4:55, somewhere in that neighborhood.

A. Yes, sir.

Q. And you left there around 5:30, somewhere in there.

A. I left a little before 5:30.

Q. And you drove directly from there to your home, parked your car in the carport, and remained there until you were arrested?

A. Yes, sir.

County Atty: I have no further questions.

(Witness excused.)

[fol. 218] R. L. DREW, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Jawn Sandifer:

Q. What is your name?
A. R. L. Drew.
Q. What is your business occupation?
A. Funeral Director and farmer.
Q. Where is your funeral parlor located?
A. 507 Ashton Avenue, Clarksdale.
Q. Do you know the defendant, Aaron Henry?
A. Yes, sir.
Q. How long have you known him?
A. Ten or twelve years.
Q. Have you known Aaron Henry during the time he was living in Clarksdale?
A. Well, that's the only time I have known him.
Q. Do you know his reputation for morality in the City of Clarksdale?
A. Yes, sir.
Q. Is it good or bad?
A. Good.

Atty Sandifer: That's all.

Cross examination.

By District Attorney, Hoke Stone:

Q. Aaron is a personal friend of yours?
A. I call it personal—we see each other every day.
[fol. 219] Q. You are associated in a number of various endeavors?
A. Yes, sir.

District Atty: No further questions.

(Witness excused.)

Rev. Walter Jones, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Jawn Sandifer:

Q. Rev. Jones, what is your business occupation?
A. My business is an elder in my church and a farmer.
Q. How long have been engaged as a minister and a farmer in Clarksdale?
A. Engaged as a farmer for about 35 years, and engaged as an elder in the church about 20 years.
Q. Do you know the defendant, Aaron Henry?
A. Known him practically all his life.
Q. Do you know what his reputation is for good moral character in Clarksdale?
A. I might say this, he was associated with my daughter who was attending school at the time he was and all I know is good.

County Atty: We're going to object.
Court: Sustain the objection.

Q. Do you know what his reputation is?
A. Good.

Atty Sandifer: No further questions.

(Cross-examination waived.)

(Witness excused.)

[fol. 220] J. D. Raiford, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Jawn Sandifer.

Q. Rev. Raiford, what is your business occupation?
A. I'm a minister.
Q. What is your church?
A. Baptist.

Q. Where is your church located?
A. One is located on 14 Sunflower, one Davenport, Mississippi, one Lambert, Mississippi.
Q. How long have you been a minister?
A. About 30 years.
Q. Do you know the defendant, Aaron Henry?
A. All his life.
Q. Do you know what his reputation is for good moral character?
A. Good.

Atty Sandifer: That's all.

Cross examination.

By District Attorney, Hoke Stone:

Q. Now, Reverend, you and Aaron are continually connected aren't you?
A. Through church work.
Q. You see him practically all the time.
A. Yes.
Q. What church are you the pastor of in Lambert?
A. Allen Chapel.

[fol. 221] District Atty: No further questions.

(Witness excused.)

W. A. Higgins, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Jawn Sandifer:

Q. What is your business occupation?
A. Director of Clarksdale negro schools.
Q. How long have you been engaged in this occupation?
A. 25 years.
Q. Do you know the defendant, Aaron Henry?
A. I do.
Q. How long have you known him?

A. Since September of 1937.

Q. And do you know what his reputation is in Clarksdale for good moral character?

A. All I have heard is good.

Atty Sandifer: That's all.

(Cross-examination waived.)

(Witness excused.)

J. W. Poindexter, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Jawn Sandifer:

Q. Mr. Poindexter, what is your business occupation?

A. I am principal of the Jonestown Junior High School at Jonestown, Mississippi.

[fol. 222] Q. And how long have you been there?

A. I have been there since 1946—served as principal since 1957.

Q. Do you know the defendant?

A. I do.

Q. How long have you known him?

A. Since 1931.

Q. And do you know what his reputation is for good moral character in Clarksdale?

A. Good.

Atty Sandifer: That's all.

Cross examination.

By District Attorney, Hoke Stone:

Q. Professor, you are a personal friend of Aaron aren't you?

A. Yes, sir.

Q. You would do anything you could to get him out of a kind of scrape like this?

A. As long as it's right.

Q. You don't condone any act like he is charged with do you?

A. No, sir.

Q. You will assist him any way you can?

A. As long as it's right.

Q. You are here at his request?

A. Yes, sir, I am.

District Atty: No further questions.

Redirect examination.

By Attorney Jawn Sandifer:

Q. Would you lie on the witness stand for Aaron Henry?

A. I would not.

[fol. 223] Q. The testimony that you have given today is true, to the best of your knowledge?

A. That's true.

Atty Sandifer: That's all.

(Witness excused.)

Dr. E. P. Burton, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Jawn Sandifer:

Q. Dr. Burton, where do you practice?

A. In Mound Bayou, Mississippi.

Q. How long have you been engaged in practice in Mound Bayou?

A. Since 1951.

Q. Do you know the defendant, Aaron Henry?

A. Yes, very closely.

Q. How long have you known him?

A. Since 1951. He was instrumental in my opening an office in Clarksdale in 1952.

Q. Do you know what Henry's general reputation is for good moral character in Clarksdale?

A. I would say par excellence.

Atty Sandifer: That's all.

(Cross-examination waived.)

(Witness excused.)

[fol. 224] JOHN G. WILLIAMS, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Jawn Sandifer:

Q. Mr. Williams, what is your business occupation?
A. Principal of Broadstreet High in Shelby.
Q. How long have you been engaged in this?
A. Approximately 16 years.
Q. Do you know the defendant, Aaron Henry?
A. I do.
Q. How long have you known him?
A. Approximately 7 years.
Q. Do you know what his general reputation is in Clarksdale for good moral character?
A. As far as I know it is good.

Atty Sandifer: That's all.
District Atty: No questions.

(Witness excused.)

JAMES C. GILLIAN, witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Jawn Sandifer:

Q. Mr. Gillian, what is your business occupation?
A. I am Grandmaster of the Masons in Mississippi.
Q. How long have you been Grandmaster of the Masons?
A. 16 years.

Q. Do you know the defendant, Aaron Henry?
[fol. 225] A. I do.
Q. How long have you known him?
A. Since he was a little boy.
Q. Do you know what his general reputation is for good moral character in Clarksdale?
A. Very good.

Atty Sandifer: No further questions.

(Cross-examination waived.)

(Witness excused.)

Claude Montgomery, Jr., witness for and on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Attorney Jawn Sandifer:

Q. Dr. Montgomery, what is your occupation?
A. Dentist.
Q. How long have you been a dentist?
A. Since June of 1955.
Q. Where do you practice?
A. 121 4th Street.
Q. Do you know the defendant, Aaron Henry?
A. I do.
Q. How long have you known him?
A. Since we were kids, 20 or 25 years.
Q. Do you know what his general reputation is for good moral character in Clarksdale?
A. Yes.
Q. Is it good or bad?
A. Good.

Atty Sandifer: That's all.

[fol. 226] (Cross-examination waived.)

(Witness excused.)

Atty Carter: Your Honor, the defendant rests.

Defendant Rests

Court: Does the State have any rebuttal?
County Atty: We would like to call Ben C. Collins.

Ben C. Collins, witness for and on behalf of the State, recalled for further examination in rebuttal.

Direct examination.

By County Attorney, Frank O. Wynne, Jr.:

Q. Mr. Collins, I show you a warrant here—is that the warrant that you served on Aaron Henry on the night that he was arrested?
A. If it's not, it's one just like it.
Q. Look on the back—is that your return made on the back of this warrant?
A. It is.
Q. Then you would say if you made a return on that showing that you personally served that writ on the defendant, that is the writ?
A. Yes, sir.

Atty Sandifer: Your Honor, I object to that. That's not what the witness said. When the document was shown to the witness, the witness said, "It was either this or one like it," and I submit the counsel is bound by the answer given by the witness.
Court: Overrule the objection.

[fol. 227] Q. That is your return on the back of that?
A. It is; yes, sir.
Q. Then from that return that is the original?
A. That's right; yes, sir.
Q. The defendant here has testified that he was not identified face-to-face with complainant. Was he brought face-to-face with the complainant and identified?
A. He was.
Q. Where did this take place?
A. Inside the jail.

County Atty: No further questions.
Court: Stand aside.

(Witness excused.)

Court: You have any further rebuttal?

Atty Carter: Your Honor, of course we are going to renew a motion at this time before—

Court: Motion is overruled.

Atty Carter: Without hearing what my motion is, your Honor, you are going to overrule?

Court: You said you were going to renew your motion. Any that were made that were overruled are still overruled. Gentlemen of the jury, you are excused for thirty minutes.

(Jury retires.)

Motion for a Directed Verdict and Overruling Thereon

Atty Carter: Your Honor, at this time at the close of the case we want to make a motion for a directed verdict. We base it on the grounds and the reasons which we set forth in our motion for a directed verdict at the close of the State's case. We make it now at the close of the entire case on those grounds and on the grounds that the evidence [fol. 228] has not shown beyond any reasonable doubt under the law that the defendant is guilty of the charge. We therefore make a motion for a directed verdict at this time.

Court: Motion is overruled.

Court: Bring the jury in.

(Jury back in box.)

(Arguments to jury.)

Court: Retire, gentlemen, and consider your verdict.

Note: Jury retires at 4:14 P. M. to consider their verdict and at 5:05 P. M. return into open court, in the presence of the defendant, the following verdict:

"We the jury, find the defendant guilty as charged."

Court: So say all of you gentlemen?

Jury: Yes, sir.

Atty Sandifer: We would like to poll the jury.

Clerk: Albert J. Keith.

Court: Is that your verdict, Mr. Keith?

Mr. Keith: That's my verdict.
Clerk: Joe Wayne Reed.
Court: Is that your verdict, Mr. Reed?
Mr. Reed: Yes, sir.
Clerk: Otis Fowler.
Court: Is that your verdict, Mr. Fowler?
Mr. Fowler: Yes, sir.
Clerk: Lint Wolfe.
Court: Is that your verdict, Mr. Wolfe?
Mr. Wolfe: Yes, sir.
[fol. 229] Clerk: W. G. Barr.
Court: Is that your verdict, Mr. Barr?
Mr. Barr: Yes, sir.
Clerk: J. C. McGuffie.
Court: Is that your verdict, Mr. McGuffie?
Mr. McGuffie: Yes, sir.
Clerk: Willie A. Weeks.
Court: Is that your verdict?
Mr. Weeks: Yes, sir.
Clerk: L. L. Albritton.
Court: Is that your verdict, Mr. Albritton?
Mr. Albritton: Yes, sir.
Clerk: Harry R. Boschert.
Court: Is that your verdict, Mr. Boschert?
Mr. Boschert: Yes, sir.
Clerk: R. O. Prevost.
Court: Is that your verdict?
Mr. Prevost: Yes, sir.
Clerk: Herman D. Bailey.
Court: Is that your verdict, Mr. Bailey?
Mr. Bailey: Yes, sir.
Clerk: J. M. Denton.
Court: Is that your verdict, Mr. Denton?
Mr. Denton: It is.
Court: Anything further?

(No response.)

(Jury discharged.)

(Adjournment.)

[fol. 230] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 231]

IN THE COUNTY COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

[Title omitted]

STATE'S INSTRUCTION NO. 1—Filed May 22, 1962

The Court instructs the jury for the State, that if you believe from the evidence in this case beyond every reasonable doubt, that the defendant, Aaron Henry did then and there wilfully and unlawfully disturb the peace of Sterling Lee Eilert by indecent and offensive conduct at and toward the said Sterling Lee Eilert in that he did then and there wilfully, unlawfully and *ontentionally* use obs*ence* language to and toward the said Sterling Lee Eilert and by placing his hand on the leg and private parts of the said Sterling Lee Eilert, then it is your sworn duty to find the defendant, Aaron Henry, guilty as charged and the form of your virdict *maybe*:

"WE THE JURY FIND THE DEFENDANT GUILTY AS CHARGED."

[File endorsement omitted]

[fol. 232]

IN THE COUNTY COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

[Title omitted]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

The Court instructs the jury for the defendant that in order for you to find the defendant guilty, you must conclude that his guilt has been proven beyond all reasonable doubt. Proof beyond all reasonable doubt simply means that your minds are unwavering and settled and unable to come to any other reasonable conclusion and unless your minds are unwavering, settled and unable to come to any reasonable conclusion other than that the defendant is guilty of disorderly conduct and the crime as charged, you must acquit the defendant.

[fol. 233]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

[Title omitted]

The Court instructs the jury for the defendant that if you conclude from the evidence adduced in support thereof finds that the complainant is not reliable and that he is not a person of good moral character, you are entitled to take this into consideration in determining the guilt or innocence of the defendant.

[fol. 234]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

[Title omitted]

The Court instructs the jury for the defendant that if you find that the peace of the complainant, Sterling Lee Ellert was not disturbed and that the defendant committed no act of violence against the complainant, then you must acquit the defendant.

[fol. 235]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

[Title omitted]

The Court instructs the jury for the defendant that if you conclude from the evidence adduced upon this trial, that the defendant is a man of good moral character, you are entitled to take this into consideration in determining his guilt or innocence.

[fol. 236]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

[Title omitted]

The Court instructs the jury for the defendant that the defendant cannot be presumed to have knowingly com-

mitted a crime in violation of Section 8204 of Mississippi Code of 1942 and proof of this fact alone is insufficient to convict the defendant of the crime charged.

[fol. 237]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

[Title omitted]

The Court instructs the jury for the defendant that if you conclude that the state has failed to prove each and every essential allegation of its complaint, then the entire complaint must fall and you must acquit the defendant.

[fol. 238]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

[Title omitted]

The Court instructs the jury for the defendant that if you find that the alleged acts of the defendant were not intentional or wilful, you must acquit the defendant.

[fol. 239]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

[Title omitted]

The Court instructs the jury for the defendant that in order to convict the defendant, you must find evidence sufficient to support a verdict of guilty on each and every element of the crime charged—and this evidence must be in addition to the unsupported and uncorroborated testimony of the complainant himself.

[fol. 240]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

[Title omitted]

The Court instructs the jury for the defendant that the burden of proof of the defendant's guilt is at all times upon the State and this burden never shifts. The defendant is presumed innocent until his guilt is proven beyond all reasonable doubt.

[fol. 241]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

[Title omitted]

The Court instructs the jury for the defendant that if you find the defendant not guilty the form of your verdict shall be "we, the jury find the defendant not guilty".

[fol. 242]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

[Title omitted]

The Court instructs the jury for the defendant that you cannot find the defendant guilty on the unsupported and uncorroborated testimony of the complainant alone.

[fol. 243]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

[Title omitted]

The Court instructs the jury for the defendant that if from all of the evidence adduced in this case, there is a reasonable doubt in your mind as to whether the defendant was, in fact, present at the scene of the alleged crime, that doubt must be resolved in favor of the defendant and you must acquit the defendant.

[fol. 244]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

[Title omitted]

The Court instructs the jury for the defendant that if you find that the complainant was not, in fact, disturbed by any language used by the defendant, you must acquit.

[fol. 245]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

The Court instructs the jury that if you find that the defendant was illegally arrested and wrongfully detained, you must acquit the defendant.

[fol. 246]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

The Court instructs the Jury that if you find that the evidence used by the State was illegally obtained, you must acquit the defendant.

[fol. 247]

DEFENDANT'S INSTRUCTIONS—Filed May 22, 1962

If the evidence discloses that the defendant and the complaining witness were alone in the defendant's car at the time of the alleged disturbance to the public peace took place, the Court should instruct the jury that on those facts no violation constituting disturbing the peace under Section 2089.1 or any other section of the Code of Mississippi.

[File endorsements omitted]

[fol. 248]

IN THE COUNTY COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

VERDICT—May 22nd 1962

We the jury find the defendant guilty as charged.

[File endorsement omitted]

[fol. 249]

IN THE COUNTY COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

No. 29

THE STATE OF MISSISSIPPI,

vs.

AARON HENRY.

SENTENCE—May 22, 1962

This day came the County Attorney, who prosecutes for and on behalf of the State; came also the defendant, Aaron Henry, represented by counsel, and the defendant, having appealed from a conviction in the Third District Justice Court of V. E. Rowe on a charge of Disturbing the Peace, entered a plea of not guilty to the charge.

Both the State and the defendant announcing ready for trial, came a jury of the regular venire for the week, composed of R. O. Prevost and eleven others, all good and lawful men who, having been sworn, charged and impanelled, and especially sworn in this cause to true verdict render, according to the law and the evidence in the cause, after hearing all the evidence, the testimony of the witnesses, the argument of counsel, and having received the instructions of the Court, retired to consider their verdict. After due deliberation they presently returned into open court the following as their verdict, to-wit:

"We, the jury, find the defendant guilty as charged."

Whereupon the defendant was brought to the bar of the Court and asked if he had aught to say why sentence should not be passed upon him and answering said naught. The Court proceeded to sentence him, the said Aaron Henry, and did pass sentence upon him that for such his offense of Disturbing the Peace he is sentenced to pay a fine of $250.00 and all costs in this cause accrued and serve sixty (60) days in Jail, and that he stand committed until such sentence is served. This May 22, 1962.

[fol. 250]

IN THE COUNTY COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

[Title omitted]

MOTION FOR NEW TRIAL—Filed May 22, 1962

Comes now the defendant in the above styled cause and moves this Honorable Court to set aside the verdict of the jury and grant the defendant a new trial on the following grounds to-wit:

1.

That the state has failed to prove the offense charged in the affidavit and, therefore, the Court erred in overruling defendant's motion for a directed verdict after the state had rested its case.

2.

That the Court erred in denying defendant's instruction to the jury to find a verdict of "not guilty" after both sides had rested.

3.

That the verdict of the jury is against the overwhelming weight of the credible evidence.

4.

That to convict this defendant on such a record barren of evidence of his guilt of the offense charged in the affidavit against him would deny to the defendant rights secured by the due process clause of the Fourteenth Amendment to the Constitution.

5.

That the conviction of the defendant on this record would deprive the defendant of liberty and/or property without due process of law, and deny to him the equal protection of the laws, and abridge his privileges and immunities as a citizen of the United States Constitution, all in violation of the Fourteenth Amendment to the United [fol. 251] States Constitution and Section Fourteen of the Mississippi Constitution.

6.

And for other causes to be shown upon hearing.

R. Jess Brown, 1105½ Washington Street, Vicksburg, Mississippi;

Jack H. Young, 115½ Farish Street, Jackson, Mississippi;

Robert L. Carter, Jawn A. Sandifer, 20 West Fortieth Street, New York 18, N. Y.

[File endorsement omitted]

[fol. 252]

IN THE COUNTY COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

[Title omitted]

ORDER OVERRULING MOTION FOR NEW TRIAL—May 22, 1962

The Court having heard argument of counsel for the State and the Defendant on Defendant's motion for a new

trial, is of the opinion that said motion should be, and the same is hereby overruled.

Ordered this May 22, 1962.

[File endorsement omitted]

[fol. 253]

IN THE COUNTY COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

[Title omitted]

NOTICE OF APPEAL—Filed May 22, 1962

To: Hon. Mrs. Walter Lewis,
Circuit Clerk and Clerk of County Court,
Bolivar County,
Cleveland, Mississippi.

Please Take Notice that the defendant in the above styled and numbered cause desires to appeal his conviction of "Disturbing the Peace" in said Court on the 22nd day of May, 1962, to the Circuit Court of the Second Judicial District of Bolivar County, Mississippi, and does hereby request and direct that all records, transcripts and other documents in connection with the above styled and numbered cause be compiled and transferred to the said Circuit Court of the Second Judicial District of Hinds County, at Jackson, Mississippi.

Respectfully submitted,

R. Jess Brown, Attorney for Defendant, 1105 Washington Street, Vicksburg, Mississippi;

Robert L. Carter, Jawn A. Sandifer, 20 W. Fortieth Street, New York 18, New York;

Jack H. Young, 115½ N. Farish Street, Jackson, Mississippi.

[File endorsement omitted]

[fol. 254]

IN THE COUNTY COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

[Title omitted]

NOTICE OF APPEAL—Filed May 22, 1962

To: Mrs. Lindsey,
Official Court Reporter,
Bolivar County Court,
Cleveland, Mississippi.

Please Take Notice, that the defendant, Aaron E. Henry desires to appeal his conviction for "Disturbing the Peace" in said Court on the 22nd day of May, 1962, to the Circuit Court of the Second Judicial District of Bolivar County, Mississippi, and does hereby request that you prepare a transcript of the record by *by* transcribing your notes in connection with said cause and file same with the Clerk of the County Court of the Second Judicial District of Bolivar County, Mississippi.

Respectfully submitted,

R. Jess Brown, Attorney for Defendant.

Certificate of service (omitted in printing).

[File endorsement omitted]

[fol. 255] Bond on appeal for $1000 approved and filed May 22, 1962 (omitted in printing).

[fol. 256] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 257]

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

CAPTION

Be it remembered that a regular term of the Circuit Court of the Second Judicial District of Bolivar County, in the State of Mississippi, was begun and holden in and for said County and Second District and said State at the Courthouse thereof in the City of Cleveland, on the third Monday of November, A. D. 1962, the same being the 19th day of November, at the time and place and in the manner prescribed by law for the holding of said term of court, in the Eleventh Circuit Court District of the State of Mississippi, when there were present and presiding the Honorable E. H. Green, Judge of said Circuit Court District; Hoke Stone, District Attorney; Frank O. Wynne, Jr., County Attorney; J. H. Pace, Sheriff; A. W. Comings, Court Reporter; and Mrs. Walter Lewis, Circuit Clerk.

The Court being regularly opened by due proclamation of the sheriff, the following proceedings were had and done, to-wit:

[fol. 258]

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

AARON E. HENRY, Appellant,

vs.

STATE OF MISSISSIPPI.

ORDER AFFIRMING CONVICTION—November 20, 1962

This day the above styled and numbered cause came on to be heard on appeal from the County Court of the Second Judicial District of Bolivar County, Mississippi, wherein the defendant, Aaron Henry was convicted after trial by jury, and the Court having thoroughly examined

the record of all proceedings certified to this Court, having considered all grounds for error charged by defendant and briefs pertaining thereto filed by attorneys for the defendant, doth find that there is no error in the trial of the lower Court and that the conviction of the County Court should be affirmed.

Wherefore, it is the Judgment of the Court and the Court does hereby affirm the conviction of Aaron Henry by the County Court aforesaid in the trial of the cause aforesaid.

Exception to this ruling by defendant is hereby noted and appeal bond is hereby fixed in the amount of $1000.00.

Done and Ordered at this the regular November, 1962 term and in open court, this November 20, 1962.

E. H. Green, Circuit Judge.

[File endorsement omitted]

[fol. 259]

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

[Title omitted]

NOTICE OF APPEAL—Filed November 20, 1962

To: Mrs. Walter Lewis,
Circuit Clerk,
Bolivar County,
Cleveland, Mississippi.

Please Take Notice that Aaron E. Henry, appellant in the above styled and numbered cause, desires to appeal to the Supreme Court of the State of Mississippi, the ruling of the Circuit Court entered on the 20th day of November, 1962, affirming his conviction in the County Court below, and does hereby request and direct that the following rec-

ords and documents be compiled and transmitted to the said Supreme Court of the State of Mississippi:

1. All records from the Justice of the Peace Court in this case.

2. All motions filed in the County Court in this case and the ruling of the Court on same.

3. Complete transcript of the testimony taken on the trial in the County Court.

4. Verdict of Jury.

5. Appellant's Brief and Assignment of Error.

6. Appellee's Brief.

7. Judgment of Circuit Court.

Respectfully submitted,

Jack H. Young, Attorney for Appellant.

[File endorsement omitted]

[fol. 260] Certificate of service (omitted in printing).

[fol. 261]

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL TO SUPREME COURT OF MISSISSIPPI—Filed December 15, 1962

Comes now the defendant, by his undersigned attorneys, and respectfully requests that this Court grant an appeal of his case to the Supreme Court of the State of Mississippi. In support of said petition the defendant submits that during the trial of the case, the following constitutional questions were raised, to-wit:

I

That the Assumption of Jurisdiction of This Cause by the Court Below Deprived Appellant of His Constitutional Rights to Due Process.

II

That the Unauthorized Arrest of Appellant and Search of His Property Violated Rights Secured to Him by the Fourteenth Amendment of the United States Constitution and the Constitution of Mississippi.

III

That the Appellant's Conviction Denied Due Process of Law Because It Rested on Insufficient Evidence of the Essential Elements of the Crime, and Because of Error in the Court's Rulings.

Defendant submits that the presence of these federal constitutional issues make this case a proper instance for granting of an appeal from the Circuit Court to the Supreme Court of Mississippi, pursuant to Section 1617 of the Mississippi Code (1942) and, therefore, prays that this Court grant defendant's application.

Respectfully submitted,

Jack H. Young, 115½ North Farish Street, Jackson, Mississippi;

R. Jess Brown, 125½ North Farish Street, Jackson, Mississippi;

[fol. 262] Robert L. Carter, Barbara A. Morris, 20 West 40th Street, New York 18, New York, Attorneys for Appellant, By Jack H. Young, Of Counsel.

Duly sworn to by Jack H. Young, jurat omitted in printing.

Certificate of service (omitted in printing).

[File endorsement omitted]

[fol. 263]
IN THE CIRCUIT COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

[Title omitted]

ORDER FOR ALLOWANCE OF APPEAL TO SUPREME COURT OF MISSISSIPPI—December 15, 1962

This cause coming on to be heard on the petition of the defendant, Aaron Henry, for allowance of an appeal to the Supreme Court of Mississippi, and the Court being of the opinion that the relief prayed for should be granted, it is, therefore,

Ordered and Adjudged that the defendant, Aaron Henry, be and he is hereby allowed an appeal to the Supreme Court of the State of Mississippi.

Ordered and Adjudged on this 15 day of December, 1962.

E. H. Green, Circuit Judge.

[File endorsement omitted]

[fol. 264] Bond on appeal for $1000 approved and filed November 20, 1962 (omitted in printing).

[fol. 266] Clerk's Certificate to foregoing (omitted in printing).

[fol. 267] [File endorsement omitted]

[fol. 268]

IN THE SUPREME COURT OF MISSISSIPPI

APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL DISTRICT OF BOLIVAR COUNTY, MISSISSIPPI

No. 42,652

AARON HENRY, Appellant,

v.

STATE OF MISSISSIPPI, Appellee.

ASSIGNMENT OF ERROR—Filed March 30, 1963

I.

The Court below erred in denying defendant's pre-trial motions for issuance of subpoenas duces tecum.

II.

The Court below erred in denying defendant's motion for dismissal of the case.

III.

The Court below erred in denying defendant's motion for a directed verdict at the close of the State's case.

IV.

The Court below erred in overruling defendant's motion for a new trial.

Respectfully submitted,

Jack H. Young, 115½ North Farish Street, Jackson, Mississippi;

Jess Brown, 1105½ Washington Street, Vicksburg, Mississippi;

Robert L. Carter, Barbara A. Morris, 20 West 40th Street, New York 18, New York.

By Barbara A. Morris, Attorneys for Appellant.

[fol. 269]

IN THE SUPREME COURT OF MISSISSIPPI

No. 42,652

AARON HENRY,

vs.

STATE OF MISSISSIPPI.

OPINION

RODGERS, Justice:

The appellant was tried and convicted in the Justice of the Peace Court of Bolivar County, Mississippi, on a charge of disorderly conduct of disturbing the peace of Sterling Lee Eilert. The charge was brought under § 2089.5, Miss. Code 1942, Rec. On appeal to the County Court, the case was tried de novo, and appellant was again convicted. He was accordingly sentenced to serve sixty days in jail and pay a fine of $250. The Circuit Court affirmed the judgment of the County Court and appellant has appealed to this Court.

The evidence in this case reveals the following facts: On March 3, 1962, Sterling Lee Eilert "hitchhiked" [fol. 270] (begged an automobile ride) on the various highways from his home in Memphis, Tennessee, to the intersection of Highways 49 and 61 in Clarksdale, Mississippi. He arrived at this intersection about five o'clock in the afternoon, and about 5:30 o'clock appellant stopped his automobile at this intersection and invited young Mr. Eilert to ride with him. They proceeded along Highway 61 toward Shelby, Mississippi, and after they had passed Alligator, Mississippi, appellant asked Mr. Eilert about his sex life. It is not necessary to detail the ensuing conversation. It is sufficient to say that the foregoing conversation culminated in assault upon Mr. Eilert, in that appellant reached over and touched his privates. The State witness immediately requested the appellant to stop the automobile, and when it stopped, he got out and went to the back and got his suitcase. He looked at the tag on the car, and although he could not see all of the numbers on the tag, he remembered the number 1798. Mr. Eilert immediately sought the police, first by telephoning and

finally by going to the police station. He gave the police a description of the automobile and the driver, as well as the numbers he saw on the tag. The officers promptly [fol. 271] radioed Clarksdale for the name of the owner of the automobile from the records of license tags. This request was shown to have been made at 5:56 o'clock. The information was immediately given to the officers, that Aaron Henry was the owner of the automobile described by the witness.

The officers prepared an affidavit, which was signed by the witness Eilert. The affidavit was presented to the Justice of the Peace, Rowe, who issued a warrant for the arrest of defendant Aaron Henry. One of the officers took the warrant and the witness Eilert to Clarksdale and the warrant was turned over to the desk clerk at police headquarters. Notice was given to patrol cars by radio from the Clarksdale police station, notifying them to be on the lookout for appellant, Aaron Henry. This information was received by radio by officer Henry Petty at 6:04 P.M., and he immediately went to the drug store and home of Aaron Henry, but his automobile was not at the drug store or at his home. Later in the afternoon, appellant's automobile was located at his home ten or twelve minutes to seven o'clock. Notice was relayed by radio to the chief of police, who went to the home of defendant and arrested him a few minutes before seven o'clock.

[fol. 272] Appellant's defense to the charge was an alibi. His testimony shows that he left the drug store at 4:45 o'clock, and went to the Delta Burial Corporation. This is a funeral home operated by John Melcher. He said he remained at the funeral home until approximately 5:20 P.M.

Defendant introduced several witnesses who testified that they saw him at the funeral home between the hours of 4:45 and 5:20. Defendant also introduced his wife and two other witnesses who testified he arrived at his home about 5:30 or 5:35 o'clock. Defendant also introduced a large number of Negro professional men, doctors, dentists, ministers and professors, as well as colored plantation owners and business men, to prove his good character.

Appellant has presented four assignments of error, on appeal, alleged to have been made in the trial of this case

in the court below, but only argues three propositions, namely: (1) The assumption of jurisdiction of the cause by the trial court deprived appellant of his constitutional rights to due process. (2) The court erred in not granting a new trial to appellant on the ground that the county court permitted the State to introduce evidence obtained [fol. 273] by an unlawful search of his automobile. (3) Appellant's conviction denied due process of law to the defendant because it rested on insufficient evidence of the essential elements of the crime, and because of the error in the court's rulings.

I.

The appellant based his first assignment of error upon "the absence of competent evidence of the existence of an affidavit on March 3, 1962, the date of the commencement of prosecution of appellant * * *." Appellant then argues that the justice of the peace had no jurisdiction to issue a warrant for the arrest of the defendant, Aaron Henry, and thereafter, the county court and circuit court had no jurisdiction of the cause because the defendant was alleged to have been convicted without due process of law.

The theme of appellant's contention is that no affidavit was made before a justice of the peace charging defendant with the crime; that in fact no warrant was issued by the justice of the peace before defendant was arrested. To sustain this thesis, appellant introduced one of his attorneys who testified (over objection of the State) that he called upon the county attorney and asked him if he had the [fol. 274] affidavit "pursuant to" the arrest of Aaron Henry. He stated that the county attorney told him he did not have the affidavit, but that it was in the custody of Mr. Rowe, the Justice of the Peace, at Shelby. He said the county attorney advised him it would be necessary to amend the affidavit. This attorney also testified that he called the justice of the peace on the telephone and said that he was informed that he had no knowledge of the arrest of Aaron Henry, and that it did not come before him on the date of the alleged affidavit. Appellant also testified in his own behalf, stating that the warrant served on him

was not the warrant in the file certified to the county court by the justice of the peace.

The testimony for the State showed the prosecuting witness Sterling Eilert signed an affidavit and that thereafter the Justice of the Peace Rowe issued the warrant charging defendant with a misdemeanor. The warrant was delivered to Officer Charles Reynolds, who, in turn, delivered it to the desk sergeant at Clarksdale, Mississippi. Chief of Police Ben C. Collins secured the warrant and served it upon the defendant at his home.

The record further reveals that the defendant's attorney admitted that an amended affidavit was properly substi- [fol. 275] tuted for the original which was lodged with the justice of the peace on the 14th day of March (the day defendant was tried in the justice of the peace court.) Defendant was arraigned and tried on the amended affidavit certified to the county court from a justice of the peace court. A copy of this amended affidavit was given to defendant's attorney, and no objection was made to the amended affidavit at the time of the trial in the justice of the peace court.

The appellant points out that § 1832, Miss. Code 1942, Rec., requires that an affidavit be lodged with the justice of the peace charging commission of a crime before warrant shall issue for arrest of an offender.

This Court has repeatedly held that an affidavit is a prerequisite to prosecution for a misdemeanor. Moreover, we have held that a justice of the peace court has no jurisdiction of a criminal charge until an affidavit has been lodged with it. See the cases cited under the above Code § 1832. This is also the general rule accepted in a majority of jurisdictions. See: 22 C. J. S., Criminal Law, § 143, p. 379; 14 Am. Jur., Criminal Law, § 245, p. 937.

Amendments, however, are liberally allowed under our [fol. 276] Mississippi procedure so as to bring the merits of a case fairly to trial. The following Code sections are illustrative of this point. The applicable part of § 1202, Miss. Code 1942, Rec., with reference to this subject is in the following language: "On the trial in the circuit court of any case on such appeal the affidavit charging the offense and other proceedings may be amended at any time before

a verdict, so as to bring the merits of the case fairly to trial on the charge intended to be embraced in the affidavit."

Section 2535, Miss. Code 1942, Rec., is in the following language: "When an appeal is presented to the circuit court in any criminal case from the judgment or sentence of the justice of the peace or municipal court, it shall be permissible, on application of the state or party prosecuting, to amend the affidavit, pleading, or proceedings so as to bring the merits of the case fairly to trial on the charge intended to be set out in the original affidavit; the amendment to be made on such terms as the court may consider proper."

The foregoing Code sections are also applicable to appeals to the county court. See § 1617, Miss. Code 1942, Rec. [fol. 277] We have often held that defective affidavits on which a defendant was convicted in a justice of the peace court could be amended in the circuit court on appeal. Coulter v. State, 75 Miss. 356, 22 So. 872; Triplett v. State, 80 Miss. 379, 31 So. 743; Brown v. State, 81 Miss. 137, 32 So. 952; Mays v. State, 216 Miss. 631, 63 So. 2d 110; Simmons v. State, 179 Miss. 713, 176 So. 726; Moran v. State, 137 Miss. 433, 102 So. 388; Weddell v. Seal, Admr., 45 Miss. 726; Green v. Boone, 57 Miss. 617. See also 31 Am. Jur., Justice of the Peace, § 130, p. 287. This is also accepted as the general rule. See 31 Am. Jur., Justices of the Peace, § 126, p. 285.

Section 1205, Miss. Code 1942, Rec., provides the method of transmitting cases from the justice of the peace court to the circuit court or county court, and § 1199, Miss. Code 1942, Rec. provides the form of the certificate required to be used to verify the record of the justice of the peace court on appeal.

It is universally accepted as the general rule of law that where properly authenticated or certificated records have been filed on appeal, they import absolute verity, and the [fol. 278] record is the sole, conclusive and unimpeachable evidence of the proceedings in the court below. If the record is incomplete or incorrect, amendment, or correction, must be sought by appropriate proceeding. The record cannot be impeached collaterally by oral testimony or extrinsic evidence aliunde the record. 4A C. J. S., Appeal

and Error, § 1143, p. 1201, *et seq.* See also 31 Am. Jur., Justices of the Peace, § 126, p. 285.

In the case of Whittington v. State, 218 Miss. 631, 67 So. 2d 515, this Court pointed out the change in the law as shown by § 1987, Miss. Code 1942, Rec., and said: "Although under Sections 1199 and 1200, Code 1942, it is still mandatory that the justice of the peace or the mayor or police justice, in appeals from their courts, shall transmit to the proper clerk a certified copy of the record of the proceedings with the original papers, process and appeal bond, yet, if no objection is made to the transcript before or during the trial of the case, on its merits, it will still be conclusively presumed that the transcript was before the court and complied in every respect with the law. Hence no error can be predicated on that ground on appeal to this Court."

[fol. 279] The certificate of the justice of the peace and the record in this case show a general affidavit was made on "3-3-62" charging defendant with "disturbing the peace" and that a capias was issued on "3-3-62."

In the case of Winfield v. City of Jackson, 89 Miss. 272, 42 So. 183, this Court held that where an affidavit was missing, affidavit could be supplied by oral proof on the trial.

In the case of Redus v. Campbell, 85 Miss. 165, 37 So. at 1010, we held that it was competent for the circuit court to issue the necessary process to require the justice of the peace to produce the original papers in the cause of action.

The most direct and obvious method of procedure, applicable in a case where it is sought to be shown that there was in fact no affidavit made or lodged with the justice of the peace at the time the warrant was issued, is to summon the justice of peace to bring his trial docket into court. He may then be required to testify on a preliminary motion to quash and dismiss a criminal charge against the defendant, whether or not there was in fact an affidavit filed or lodged with him.

[fol. 280] We are therefore of the opinion that the trial court was correct in overruling the motion of appellant to quash the amended affidavit charging the defendant with a misdemeanor, although the original affidavit could not be found among the papers certified to the county court;

because the record reveals there was an original affidavit lodged with the justice of peace at the time the warrant was issued.

II.

It is next contended by appellant that the court was in error in overruling his motion for a directed verdict, made when the State had rested its case. The second part of this motion is based upon the proposition that the State introduced the testimony of Officer Ben C. Collins, with regard to evidence alleged to have been obtained by an unlawful search of appellant's automobile.

The record shows that Officer Collins testified that after he had arrested Aaron Henry at his home and had conveyed him to the police station, he returned to Henry's home for the purpose of examining the interior of his automobile.

He testified that he went to the door and knocked and finally Aaron Henry's wife came to the door, and he told her that he would like to look at her car and she said she [fol. 281] would get the keys because the car was locked. The officer unlocked the car and turned the switch on, plugged the cigarette lighter in, and discovered that it would not work. He then looked in the ash tray on the right side, and found it to be filled with red Dentyne Chewing Gum wrappers. The officer then said that he asked Aaron Henry's wife and people present "Can you tell me what's in this ash tray?" He then stated: "Aaron Henry's little girl said, yes, sir, them is Dentyne Chewing Gum wrappers, I put them in there about three days ago."

This evidence corroborates the testimony of the prosecuting witness, Sterling Lee Eilert, above set out, wherein he had informed the officers of the color of the upholstery of the automobile, the fact that the lighter would not work, and the ash tray was filled with chewing gum wrappers. There had been very little evidence to corroborate the testimony of Eilert until Officer Collins testified. Charles Reynolds knew the color of the upholstery of defendant's automobile, and knew that the automobile was a "Star Chief Pontiac."

[fol. 282] No objection was made to the testimony of Officer Collins with reference to the search at the time it was introduced and defense counsel cross-examined him about the chewing gum wrappers and the ash tray.

After careful examination of this record as a whole, we have come to the conclusion that the search of Aaron Henry's locked automobile without a search warrant, at a time when the automobile was in defendant's driveway, was an unlawful search and was in violation of § 23, Miss. Constitution 1890.

In 1922, the Mississippi Supreme Court adopted the exclusionary rule announced in Weeks v. United States, 232 U. S. 383, in Tucker v. State, 128 Miss. 211, 90 So. 845. Since that time this Court has accumulated a great wealth of opinions which have meticulously followed the exclusionary rule rejecting testimony obtained by unlawful search and seizure.[1]

In the case of Boyd v. State, 206 Miss. 573, 40 So. 2d 303 (1949), this Court pointed out that the search of an

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[fol. 289] [1] At one time the rule was firmly settled, that evidence obtained by an unreasonable, unwarranted and unlawful search and seizure, if otherwise pertinent to the issue was not rendered incompetent and inadmissible because of the wrongful method in which it was obtained. See 20 Am. Jur., Evidence, § 394, p. 354. This rule passed through various stages, as shown by the following cases: Boyd v. United States, 116 U. S. 616 (1886); Weeks v. United States, 232 U. S. 383, 34 S. Ct. 341, 58 L. Ed. 652, LRA 1915B 834, Ann. Cas. 1915C 1177 (1914); Wolf v. Colorado, 338 United States, 25 (1949); McNabb, et al. v. United States, 318 U. S. 332 (1943); Irvine v. California, 347 U. S. 128 (1954); Elkins v. United States, 364 U. S. 206 (1960); Agnello, et al. v. United States, 369 U. S. 20 (1925); Rochin v. California, 342 U. S. 165 (1952).

Finally, in the case of Mapp v. Ohio, 367 U. S. 643, 81A S. Ct. Rep. 1684, the Supreme Court of the United States held that the evidence obtained by unconstitutional search was inadmissible in state prosecutions, and vitiated state convictions by bringing the exclusionary rule established by the Fourth Amendment under the "due process" clause of the Fourteenth Amendment. The Court said: "Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government."

automobile without a warrant was unauthorized, and that an officer would not be permitted to invade the private [fol. 283] premises of a defendant without a search warrant, and search an automobile in his garage, after the automobile had come to rest at the completion of the journey. See also Brooks v. State, 209 Miss. 150, 46 So. 2d 94. Cf. Smith v. State, 240 Miss. 738, 128 So. 2d 857.

III.

It is suggested by the Attorney General in the instant case that the wife of defendant consented to the search of the automobile and thereby waived the necessity of a search warrant. We prefer, however, to follow the great weight of authority which holds that a wife cannot waive the constitutional rights of her husband. We hold that appellant's wife did not waive his constitutional rights by consenting to the search of his automobile. Cofer v. United States, 37 Fed. 2d 677 (Miss. 1930); Gilliland v. Commonwealth, 224 Ky. 453, 6 S. W. 2d 467; Hays v. State, 261 P. 232 (Okla.); Rose v. State, 254 P. 509 (Okla.); 47 Am. Jur., Search and Seizures, § 72, p. 548. Cf. Brewer v. State, 142 Miss. 100, 107 So. 376.

IV.

As a general rule in jurisdictions which adhere to the [fol. 284] rule denying the admissibility of evidence secured by an unlawful search and seizure, the accused must ordinarily interpose a timely challenge to the validity of the seizure and admission of evidence. 20 Am. Jur., Evidence, § 396, p. 357; 23A C. J. S., Criminal Law, § 1060, p. 7. In some jurisdictions, a preliminary motion is made for the suppression of evidence. In Mississippi, however, it is only necessary to object to admission of the evidence at the time it is offered. See 23A C. J. S., Criminal Law, § 1060, at p. 14; Holmes v. State, 146 Miss. 351, 111 So. 860.

It has been a long established procedural rule in this State that parties prejudiced by the introduction of inadmissible evidence are required to object to its admissibility at the time it is offered so that the trial judge may

determine its admissibility before it is submitted to the jury. Moreover, error cannot be predicated upon admission of evidence to which no objection was made. McNutt v. State, 143 Miss. 347, 108 So. 721; Harris v. State, 153 Miss. 1, 120 So. 206; Williams v. State, 171 Miss. 324, 157 So. 717; Dick, Aleck, and Henry, Slaves v. State, 30 Miss. 593; Loftin v. State, 150 Miss. 228, 116 So. 435; Holmes v. [fol. 285] State, 146 Miss. 351, 111 So. 860; Carr v. State, 187 Miss. 535, 192 So. 569; Wright v. State, 212 Miss. 491, 54 So. 2d 735.

We have also held that a motion to exclude inadmissible testimony at the conclusion of the evidence comes too late. Harris v. State, supra; Dick v. State, supra; Peters v. State, 106 Miss. 333, 63 So. 666.

In the instant case, the motion made by the defense attorney at the close of the State's testimony did not request the court to exclude the testimony alleged to have been wrongfully obtained. The motion requested a directed verdict, or that the case be dismissed against defendant because some of the testimony introduced was obtained illegally. In short, under ordinary circumstances error could not be predicated upon the admission of such testimony.

It appears from the records reaching this Court that numerous cases have been tried recently in this State by nonresident attorneys who have traveled great distances to appear in defense of persons charged with misdemeanors and minor offenses, but who are not adept in the technique of jury trials in criminal court in Mississippi. This Court [fol. 286] is conscious of the fact that such a situation has cast an unusual burden upon the trial judges to determine how to eliminate objectionable testimony, when no objection is made, and at the same time insure a fair trial by due process of law, as required by Article 3, § 14, Miss. Constitution, 1890.

In the case of Brooks v. State, 209 Miss. 150, 46 So. 2d 94, this Court pointed out that in a narrow class of cases where fundamental and constitutional rights are ignored, due process does not exist, and a fair trial in contemplation of law cannot be had, and the Court said: "Errors affecting fundamental rights are exceptions to the rule that questions not raised in the trial court cannot be raised for the first time on appeal."

In the case of Brown v. State of Mississippi, 297 U. S. 278 (173 Miss. 542, 158 So. 339), where a confession had been obtained by duress, and the Mississippi Supreme Court sustained the conviction on the grounds that (1) immunity from self-incrimination is not essential to due process of law, and (2) failure of the trial court to exclude confessions after the introduction of evidence showing their incompetency, in the absence of a request for [fol. 287] such exclusion, did not deprive defendants of life or liberty without due process of law; and that even if the trial court had erroneously overruled a motion to exclude confessions, the ruling would have been mere error, reversible on appeal, but not a violation of a constitutional right. The United States Supreme Court said: "In the instant case, the trial court was fully advised by the undisputed evidence of the way in which the confessions had been procured. The trial court knew that there was no other evidence upon which conviction and sentence could be based. Yet it proceeded to permit conviction and to pronounce sentence. The conviction and sentence were void for want of the essential elements of due process, and the proceeding thus vitiated could be challenged in any appropriate manner." The case was therefore reversed.

In the instant case, we are of the opinion that a new trial should be granted because appellant's case is based primarily upon his identity. Testimony of the State's witness, Sterling Lee Eilert, is, in effect, uncorroborated without the evidence disclosed by the inspection of defendant's automobile. The unlawfully obtained evidence leaves no room to doubt that the witness Eilert had been [fol. 288] in defendant's automobile. The admission of the evidence obtained by the search of defendant's automobile thus prevented him from obtaining a fair trial, as guaranteed to all persons in courts of Mississippi. Section 14, Miss. Constitution, 1890. We therefore hold that this case comes within the narrow rule set out in Brooks v. State, supra.

V.

We do not believe that there is any merit in the contention of appellant that the evidence is insufficient to sup-

port a verdict of guilty. The defense offered by the appellant was an alibi, and we are of the opinion that such evidence was a question for the determination of the jury. Prisock v. State, —— Miss. ——, 141 So. 2d 711; Cobb v. State, 235 Miss. 57, 108 So. 2d 719; Passons v. State, 239 Miss. 629, 124 So. 2d 847.

The judgment of the lower court is reversed and the case is remanded for a new trial in accordance with this opinion.

Reversed and Remanded.

Lee, P.J., and Kyle, Arrington and Ethridge, JJ., Concur.

[fol. 290]

IN THE SUPREME COURT OF MISSISSIPPI

No. 42,652

Court Sitting:

AARON HENRY,

vs.

STATE OF MISSISSIPPI.

JUDGMENT—June 3, 1963

This cause having been submitted at a former day of this Term on the record herein from the Circuit Court of Bolivar County, Second District, and this Court having sufficiently examined and considered the same and being of the opinion that there is error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 20th day of November 1962-a conviction of disorderly conduct under Section 2089.5 of the Mississippi Code of 1942 Recompiled and a sentence to pay a fine of $250.00 and costs and to serve 60 days in jail—be and the same is hereby reversed and remanded. It is further ordered and adjudged that the Costs of the Clerk of this Court be paid out of the appropriation provided for cases in which the State Fails.

[fol. 291] [File endorsement omitted]

[fol. 292]

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 42,652

[Title omitted]

SUGGESTION OF ERROR—Filed June 12, 1963

Comes the State of Mississippi by G. Garland Lyell, Jr., Assistant Attorney General, and respectfully suggests that this Honorable Court erred in its decision in this case handed down June 3, 1963 in the following respects:

I.

The case of Brooks vs. State, 209 Miss. 150, 46 So. 2d 94, is not decisive of the instant case for the reason that in the instant case, while appellant's attorneys did not object to the admission of certain evidence obtained as a result of an unlawful search, there was only one such instance and such did not make this case "a most unusual one" as was the Brooks case and it cannot be legally said that the failure to object to the evidence so infected the case as to deny due process of law.

II.

In its opinion in this case, this Honorable Court completely ignored the State's argument, amply supported by [fol. 293] authorities, as to the estoppel of appellant to claim error on appeal with respect to the evidence unlawfully obtained when appellant himself, through his own witnesses, developed the identical testimony even to a greater degree.

Respectfully submitted,

Joe T. Patterson, Attorney General, By G. Garland Lyell, Jr., Assistant Attorney General.

Certificate of service (omitted in printing).

[fol. 295]

BRIEF IN SUPPORT OF SUGGESTION OF ERROR—
Filed June 12, 1963

It is with deference that the suggestion of error herein is filed. It would not have been filed were the writer not of the definite opinion that it should be sustained. As this Court well knows, the writer of this brief in the last six years, at times with his associates, has filed perhaps over six hundred briefs in criminal appeals before this Court. While the files have not been checked, it is safe to say that suggestions of error have been filed in only three or four cases reversed by this Court. The writer is not alone in his feeling with respect to the opinion of the Court in this case. It has been discussed with numerous lawyers and judges and each has urged the filing of this suggestion of error that the Court might reconsider its decision.

The State has no argument with the Court's decision that the wife of appellant had no authority to waive appellant's constitutional rights with respect to the search of his automobile and readily accepts the opinion of the Court on that phase of this case, but, after exhaustive re-
[fol. 296] search, this writer has been unable to find a single case from this or any other jurisdiction to support the conclusion of this Court that this case falls in that class of cases represented by *Brooks* vs. *State*, 209 Miss. 150, 46 So. 2d 94.

The Court's decision is predicated solely on the failure of appellant's counsel to object to the testimony of Police Chief Ben Collins with respect to the inoperable cigarette lighter and the quantity of Dentyne chewing gum wrappers in the ash tray, strong corroborative evidence of the prosecuting witness's testimony, which the Chief of Police found as a result of an unlawful search of appellant's car after appellant had been taken to jail. This Court would excuse the failure of counsel to object on the ground that they were "non-resident attorneys who have traveled great distances to appear in defense of persons charged with misdemeanors and minor offenses, but who are not adept in the technique of jury trials in criminal court in

Mississippi", yet this Court completely overlooked the fact that a Mississippi attorney also actively participated in the trial and in the proceedings antecedent thereto (R. 13), which local attorney is presumed, in the absence of any evidence to the contrary, to have sufficient skill and learning to defend an accused adequately. *Wooddell* v. *State* (*Md.*), *162 A2d 468; State* v. *Griffith* (*Wash.*), *328 P2d 897.*

While the State of Mississippi would never advocate the denial of constitutional rights, it has always been the law that such rights can be waived. However, there is an interesting trend in the reported cases today that should be [fol. 297] stopped at a reasonable level and has been stopped within bounds of reason by all those Courts, both State and Federal, in which the matter has been considered; that is the effort on appeal after conviction to then try the lawyers involved. The courts formerly tried the accused, then in more recent years the Constable in effect became a defendant and now convicted defendants seek relief on appeal by trying their own lawyers. While in the case at bar no reply brief was filed by appellant and the soundness of the State's brief was not questioned, this Court on its own, but without using such language, has in effect held that appellant's counsel was inadequate in their representation.

The practice of law is not an exact science, No two lawyers will try cases alike, not even closely associated partners. No two lawyers will always agree on trial tactics. Yet this Court, in its opinion in this case, has departed from the record and determined as a fact that the New York lawyers involved in this case did not know enough about Mississippi trial "technique" to seasonably object to Chief Collins' testimony, at the same time ignoring the fact that there was a Mississippi lawyer also in the case. It is inconceivable to this writer, even in the absence of the local lawyer, that Robert L. Carter and Jawn A. Sandifer were so inexperienced or inept as to not know that at some stage in the trial an objection to Chief Collins' testimony had to be made in some form for it to be excluded. There was no objection, no motion to suppress nor was the admissibility of the testimony chal-

[fol. 298] lenged on motion for new trial. The only reasonable conclusion to draw is that as a matter of strategy defense counsel allowed the testimony of Chief Collins to go in without objection. This is further indicated by the testimony of Willie Singletary, Jr. (R. 184 et seq.), by whom the defense attempted to establish that on January 27, 1962, prior to March 3, 1962, the date of the occurrence involved, a new cigarette lighter had been put in the car. This was an obvious effort to discredit the witness Eilert and the witness Collins with respect to the inoperable condition of the cigarette lighter. The testimony of Singletary was not mentioned in the brief filed by the State in this case because it was so obvious to this writer that appellant was estopped from claiming error on Chief Collins' testimony by virtue of having produced the wife of appellant as a witness and going into the details of the search through her.

Fully realizing that an ex parte statement of fact has no place in a brief, since this Court has departed the record in assuming that the New York lawyers did not know how to exclude the testimony of Chief Collins, it must be said that when the opinion of the Court was read over the telephone this week to the District Attorney who prosecuted this case, he was shocked at the basis upon which the opinion was predicated and advised this writer that, contrary to the assumption of this Court with respect to the New York counsel, when Chief Collins was first questioned about his search of the car, attorney Jawn A. Sandifer rose as if to object but was pulled back or mo- [fol. 299] tioned back into his seat by attorney Robert L. Carter.

In reviewing this case, the Court should be interested to know that, according to Martindale-Hubbell, Robert L. Carter was born in 1917, obtained an AB degree from Lincoln University in Pennsylvania and an LLB degree from Howard University in Washington, D. C. and was admitted to practice in 1945. He is of regular, full time counsel for the NAACP in New York City and, since the appointment of Thurgood Marshall to the Federal Judiciary, has been general counsel for that organization. Jawn A. Sandifer was born in 1914, attended Johnson C. Smith

University, Charlotte, North Carolina, gained his LLB degree from Howard University, Washington, D. C., and was admitted to practice in 1943. R. Jess Brown was born in 1912, received a B.Ed degree from Illinois State Normal University, an LLB degree from LaSalle Extension University, Chicago, Illinois, was admitted to practice in Mississippi in 1953 and this Court has judicial knowledge of the extensive experience he has had in trial and appellate work.

In the brief filed herein for the State of Mississippi it was argued and, in its opinion, this Court reaffirmed the law to be that parties prejudiced by the introduction of inadmissible evidence are required to object to its inadmissibility at the time it is offered and that error cannot be predicated upon admission to evidence to which no objection was made. This Court concluded that, "In short, *under ordinary circumstances*, error could not be predicated upon the admission of such testimony." (Emphasis added) The Court then goes on to make an exceptional [fol. 300] case out of this one because of the fact that there were non-resident attorneys representing appellant who were not adept in the technique of jury trials in criminal court in Mississippi, adding, that "This Court is conscious of the fact that such a situation has cast an unusual burden upon the trial judges to determine how to eliminate objectionable testimony, when no objection is made, and at the same time insure a fair trial by due process of law. • • •"

At the outset, this Court has never held that the trial court, except in rare cases such as the Brooks case, should act as counsel for a defendant. In *Gangloff* v. *State*, (1958), 232 Miss. 395, 99 So. 2d 461, Gangloff acted as his own counsel and had certain complaints on appeal as to which his possible rights had not been protected below. In connection therewith, this Court said "There is nothing in the law which obligates or even permits a trial judge to ignore the law, or become a partisan in favor of a litigant who does not have an attorney, or say that such litigant has presented every legal principle of such learned and astute counsel, after study and preparation, may conceive. While trial judges are invariably more lenient and in-

dulgent toward such litigants, charity must not go to the extent that a party, without counsel, becomes a privileged litigant and is granted rights and immunities not afforded by law and not allowed to those who obtained counsel. If a defendant chooses to be his own lawyer, he has that right; *but such right does not license him to ignore the law, nor make him a ward of the court or the client of the trial judge.*" (Emphasis added)

[fol. 301] Thus, under Gangloff, this Court would not have reversed the case at bar even had he not had counsel at the trial.

In the case at bar this Court held under Brooks vs. State, supra, that appellant had been denied due process of law by the admission of the evidence complained of only on appeal. This position is in stark contrast to *Simmons vs. State, 197 Miss. 326, 20 So. 2d 64, cert. den. 65 Sp. Ct. 590, 324 U.S. 821, 89 L. Ed. 1391.* In that case there was a belated effort on the part of Simmons to show that an alleged confession was used against him in the trial which had been procured by force and intimidation, as to which the record was lacking in proof. This Court said: "His contention, now made, that in his trial he was denied due process cannot be maintained for the elemental reason that he was given full opportunity to be heard, and the guaranty of due process does not require more than one such opportunity. Every person must have his day in Court; but this is singular not plural."

Thus, due process of law is not denied by the reception of evidence, material and relevant to which timely objection is not made. To like effect, see cases cited in the State's brief filed herein. The Court's opinion recognizes that this is the universal rule.

The State of Mississippi has no argument with the opinion of this Court reversing the Brooks case. However, it is purely and simply not applicable to the case at bar. In the Brooks case the appellant's constitutional rights were violated in several particulars set out in its opinion, as to which there was not a single objection at the trial. The Court was kind to the attorney who sat with Brooks [fol. 302] during the trial for it is obvious from the Court's opinion that he sat throughout the trial like an

aphonic dummy either completely ignorant of his duties or completely indifferent and callous to the fate of his client. As this Court said in the Brooks case, "This case is a most unusual one" and as it repeated, "We repeat that this is a most unusual case." It certainly was and any appellate court in the land would undoubtedly have reversed a conviction where a defendant's rights had been so callously and effectively ignored and trampled both by the State and by his own counsel. Brooks falls within a class of cases, many of which are discussed in a 70 page annotation under *Lunce* vs. *Overlade*, 74 ALR 2d 1384, beginning at page 1390. In such class of cases, it is held that the incompetency (or one of its many synonyms) of private counsel for a defendant in a criminal prosecution is neither a denial of due process under the 14th Amendment, nor an infringement of the right to be represented by counsel under either the Federal or State Constitutions, unless *the attorney's representation is so lacking that the trial has become a farce and a mockery of justice.* This Court did not use such words in its opinion in Brooks but such was the obvious case.

It must also be pointed out to this Court, though repetitious, that, in cases subseqent to Brooks, this Court has not treated the admission of evidence obtained as a result of an unlawful search to be a denial of due process when admitted without objection by the defense. *Johnson* v. *State, 220 Miss. 452, 79 So. 2d 926* and other cases cited in the original brief and literally scores of other cases [fol. 303] digested in *Mississippi Digest, Criminal Law, Key Nos. 1028, 1030 and 1036.*

It is also interesting to note that, while this Court ignored the presence and representation of appellant by R. Jess Brown, a Mississippi attorney, and reversed on account of the assumed ignorance of New York counsel as to Mississippi procedural requirements, an assumption not even based upon any assertion by appellant's counsel on this appeal. Additional counsel was obtained on the appeal in the person of Jack H. Young, another experienced Mississippi attorney, and yet no reply brief was filed by any of appellant's local or New York attorneys to refute

the State's position or in any way excuse failure to object below.

It would unduly lengthen this brief to discuss all of the cases in the annotation in 74 ALR 2d referred to above but this Court is implored to carefully consider the cases therein found and it is sincerely believed that the conclusion originally reached by this Court will be reversed by virtue thereof.

The Court must bear in mind that this is not a case involving any possible State action tending to cause or causing a denial of counsel to appellant. He was accorded the highest right, that is to counsel of his own choosing. As this Court found in *Carraway* v. *State, 170 Miss. 685, 541 So. 306,* "This appears to be no longer a trial of appellant's case, but an investigation of the trial judge and the appellant's attorney, Whetstone. The record clearly shows that the family of Carraway employed and paid Whetstone as appellant's counsel. He had the right to [fol. 304] choose any lawyer he saw fit, and it would be a dangerous proceeding if a court declined to permit the counsel chosen and selected by the family of accused and accepted by the appellant, to represent the appellant in the trial of his case." Cf. *Hendrickson* vs. *State (Ind.), 118 NE2d 493* and *Wilson* v. *State, (Ind.) 51 NE2d 848.*

In addition to the multitude of cases annotated in 74 ALR 2d, the following cases are distinctly applicable to the case at bar.

In *Lotz* vs. *Sacks, (CA 6th Ohio), 292 Fed. 2d 657,* it was claimed on appeal that defense counsel rendered ineffective representation and the 6th Circuit dismissed such claim with the observation that the transcript established (as the one in the case at bar certainly should) that the defendant was represented by counsel constantly on the alert in making proper and relevant objection to what counsel considered to be objectionable remarks made by the Prosecuting Attorney in his opening statement and quoting from O'Malley vs. U. S. (6th Cir) 285 Fed 2d 733, 734 as follows "Appellant's counsel was of his own choosing. Under such circumstances the rule has been often stated that only if it can be said that what was or was not done by the defendant's attorney for his client made the pro-

ceedings a farce and a mockery of justice, shocking to the conscience of the Court, can a charge of inadequate legal representation prevail." This writer full well realizes that there is no charge on the part of appellant in the case at bar that he was inadequately represented by virtue of the failure of counsel to object to the testimony of Chief Collins, but the opinion of this Court is necessarily predicated upon that premise.

[fol. 305] In answer to a similar contention in *Popeko* vs. *U. S.*, 294 Fed. 2d 168, the 5th Circuit Court of Appeals held that without a showing of deliberate purpose on the part of counsel to prevent defendant from obtaining a fair trial, or action so grossly negligent as to amount to substantially the same thing, the defendants cannot relieve themselves of errors, mistakes or misjudgments of their counsel by having the trial set aside, making the observation that it "would be to put a premium on incompetent and inefficient counsel whose mistakes could be more certainly relied upon as effective aid for reversal than the sound and competent advice and trial conduct of the most efficient counsel," adding further that when a defendant selects his own counsel, the counsel truly represents the defendant, and no mistake or error of his, made in good faith and with an honest purpose to serve his client, can be made the basis of a claim of reversible error.

Likewise, in *People* vs. *Strader (Ill.)*, 177 NE2d 126, it was held that in cases where a defendant is represented by counsel of his own choosing, a conviction will not be reversed for poor representation unless it can be said from the record that representation was of such a low caliber as to amount to no representation at all or was such as to reduce the trial to a farce.

In *People* vs. *Robillard (Calif.)*, 358 P. 2d 295, trial strategy obviously backfired and the California Supreme Court wisely held that this was certainly no basis for saying that the minds which conceived it were incompetent. In that case the opinion emphasized that there were two [fol. 306] attorneys chosen and employed by the defendant, not just one, and that one of them was formerly a public defender in a nearby county and a man of considerable criminal law experience. In the case at bar we have three

lawyers defending appellant at the trial, one of them an experienced Mississippi lawyer, one of them, Sandifer, about whom this writer has no information as to his experience, and the third, Robert L. Carter, being general counsel of the NAACP and an attorney of vast trial and appellate experience, all this coupled with the further employment of another experienced Mississippi lawyer, Jack Young, to assist on the appeal.

In Robillard, the California Court, like all others, held that the handling of the defense by counsel of accused's own choice will not be declared inadequate except in those *rare cases* (synonymous with "most unusual" in Brooks) where his counsel displays such a lack of diligence and competence as to reduce the trial to a farce or a sham.

The Missouri Supreme Court recently considered this matter in *State* vs. *Johnson (Mo.)*, 336 SW2d 668, and remarked, "However, as stated by the United States Court of Appeals, 3rd Circuit, in United States Ex Rel Darcy vs. Handy, 203 Fed 2d 407, 426: 'There is, however, as Judge Huxman pointed out in Hudspeth, Warden vs. McDonnell, 10 Cir., 1941, 120 Fed 2d 962, 968, 'a vast difference between lacking the effective assistance of competent counsel and being denied the right to have the effective assistance of competent counsel.' *It is the latter only for which the State is responsible,* the former being normally the sole responsibility of the defendant who selected his counsel. [fol. 307] And so where, as in the case now before us, a defendant in a criminal case has retained counsel of his own choice to represent him it is settled by an overwhelming weight of authority that the commission by his counsel of what may retrospectively appear to be errors of judgment in the conduct of the defense does not constitute a denial of due process chargeable to the State."

The Missouri Court further quoting from previous authority, stated that "when counsel is retained by a defendant to represent him in a criminal case he acts in no sense as an officer of the State. For while he is an officer of the Court his allegiance is to his client whose interests are ordinarily diametrically opposed to those of the State. It necessarily follows that any lack of skill or incompetency of counsel must in these circumstances be imputed to the

defendant who employed him rather than to the State, the acts of counsel thus becoming those of his client and as such so recognized and accepted by the Court unless the defendant repudiates them by making known to the Court at the time his objection to or lack of concurrence in them. A defendant cannot seemingly acquiesce in his counsel's defense of him or his lack of it and, after the trial has resulted adversely, have the judgment set aside because of the alleged incompetence, negligence or lack of skill of that counsel."

To the same effect is *People* vs. *Prado (Calif.), 12 Cal. Reptr. 141,* a 1961 case wherein the California Court, like all other states, held on the question of actions of counsel [fol. 308] that it must have been of "such a low order as to render the trial a farce and a mockery of justice" or "it must be shown that it was 'an extreme case' and 'that the essential integrity of the proceedings as a trial was destroyed by the incompetency of counsel'." This was a case involving, as in the case at bar, an alleged unlawful search and seizure to which there was no objection at the trial and the Court further remarked that the "claimed absence of effective representation will not be sustained unless the circumstances surrounding the trial indicate a representation so lacking in competence that it becomes the duty of the Court to observe and to correct it."

In *Johnson* vs. *U. S.*, CADC, 1961, 290 Fed. 2d 378, the Court of Appeals for the District of Columbia held, "absent objection, there appears to be no reason to disturb the judgment on the ground of illegal search and seizure." Cf. *Segurola* vs. *U. S.*, 1927, 275 U. S. 106, 48 Sp. Ct. 77, *72 L. Ed. 186.*

While reversing for a combination of circumstances not present or even remotely suggested in the case at bar, Judge Wisdom, speaking for the 5th Circuit Court of Appeals in the 1960 case of MacKenna vs. Ellis, 280 Fed. 2d 592 said that "We interpret the right to counsel as the right to effective counsel. We interpret counsel to mean not errorless counsel, and not counsel judged ineffective by hindsight, but counsel reasonably likely to render and rendering reasonably effective assistance."

Most pertinent to the case at bar is *Arellanes* vs. *U. S., CA 9, 1962, 302 Fed 2d 603,* this case is doubly applicable

to the case at bar in that inadmissible testimony was put [fol. 309] in by the defense and there was a subsequent claim of ignorance of the rules of evidence. The Court commented that "Here, quite to the contrary, appellant himself elicited the questioned testimony. He now claims ignorance of the rules of evidence and says that the trial court should have intervened on its own motion to protect him from this 'folly'."

In the case at bar Arrelanes is authority for the principle of estoppel as well as the proposition not argued by appellant but granted to him on an assumption outside the record that appellant's counsel were not "adept in the technique of jury trials in the criminal court of Mississippi."

The cases cited hereinabove are merely illustrative and are the most recent cases on the subject. Again, the Court is urged to consider this case in the light of those cases annotated in 74 ALR 2d.

By no stretch of the imagination can this case be considered to fall in the category of the Brooks case and those other unusual cases in which a combination of things or the "totality" thereof plainly indicate that the proceedings below could not be considered a trial and were a sham and mockery of justice.

Even had not the Mississippi attorney been present at the trial below and appellant had been represented only by the two New York attorneys, it goes without saying that in New York and in any other state of this Union, any lawyer who has graduated from any law school or met the admission requirements of any state bar, whether he has ever tried an adversary proceeding or not knows [fol. 310] full well that at some stage a timely and seasonable objection must be made to any evidence for error later to be predicated upon its admission. As pointed out by this Court in its opinion in this case, the time and place may vary from state to state, it may be by pretrial motion to suppress or by objection when offered, but, nevertheless, there must be at some stage some objection. There was no objection at any stage of this case until it reached the Supreme Court. As far as the New York lawyers are

concerned, *People* vs. *Jakira* (*NY*), *193 NYS 306, 314*, holds that papers unlawfully seized may be used against a defendant upon the trial unless he has made seasonable application for their return. *People* vs. *Finklestein* (*NY*), *218 NYS 2nd 341, 345*, holds that a question raised for the first time in a brief after trial is not timely or properly made.

People vs. *Maiorello*, (*NY*) *222 NYS 2nd 53*, points out that under the applicable rules of the Court of General Sessions, a motion for suppression of evidence must be made prior to trial if a defendant has knowledge of grounds through affirmative allegations on which to base his motion. If this had been the only procedure known to New York counsel, they would certainly have made such a motion to suppress.

Finally, this writer feels so certain that not only did Mississippi counsel, but also New York counsel, knew that a timely objection must have been made to the testimony of Chief Collins, and that some other strategy was in mind as is indicated by the record by the testimony of appellant's wife and the witness Singletary, that he would be willing to confess to this suggestion of error should [fol. 311] not be sustained if either of the three counsel participating in this trial would respond hereto with an affidavit that he did not know that at some point in a trial in criminal court in Mississippi that an objection to such testimony must have been made.

[fol. 312] In the paragraph beginning at the bottom of page 19 of the typewritten copy of the opinion of the Court, it is given as the opinion of the Court that a new trial should be granted because appellant's case is *based primarily upon his identity*. This Court further states that the testimony of the State's witness, Sterling Lee Eilert, is, in effect, uncorroborated without the evidence disclosed by the inspection of defendant's automobile, with the further observation that the unlawfully obtained evidence leaves no room to doubt that the witness Eilert had been in defendant's automobile. Nowhere in appellant's brief is there any authority cited for the proposition that the uncorroborated testimony of the witness Eilert would not be sufficient. The trial Court undoubtedly was correct

in denying the instruction on this subject (Record 239) and there has been no argument on this appeal with respect to the propriety of the denial of that instruction. However, it appears from (Record 242) that the trial Court did grant an instruction that defendant could not be found guilty on the unsupported and uncorroborated testimony of the compaining witness alone. Undoubtedly, this was a concession to the appellant and is not founded in law. That this is true is demonstrated by the fact that appellant in his brief on this appeal makes no mention thereof. Thus, we have a twofold proposition in connection with this instruction. First, the defendant had an instruction to which he was not entitled and, second, the defendant, himself, put in issue the testimony of Chief Collins, Noel Henry and the witness Billingsly with respect to the cigarette lighter, etc., and, under the authorities cited in the annotation in 74 A.L.R. 2d, appellant cannot now be found to complain. The fact that this instruction was obtained further strengthens the argument of the State that the admission of the testimony of Chief Collins with respect to what he found when he searched the car was with full awareness of all counsel for the defense that it was subject to objection. As to the remark [fol. 313] of the Court on page 19 of its opinion that the testimony of the witness Eilert is, in effect, uncorroborated without the evidence disclosed by the inspection of defendant's automobile, this is refuted by the record and by the rest of the opinion of the Court, itself. The witness Eilert gave the tag number of the automobile, described it by model and as a Pontiac Star Chief, the information was immediately radioed to the Clarksdale police, who, together with the description of the car, which was well-known to them, and the personal description of the occupant, immediately identified the car as being that of Aaron Henry and also recognized that Aaron Henry was the occupant. Therefore, even without the corroborating testimonty of Chief Ben Collins, the jury would have been warranted in convicting appellant.

Estoppel

Completely ignored by the Court was the argument of the State beginning at the middle of page 7 of its brief filed herein to the effect that appellant cannot complain of the testimony of Chief Collins with respect to the search of the car when appellant's own counsel elicited the same information on direct examination of appellant's wife (Record 160-161). As pointed out hereinabove, this was felt to be so solid a ground that the State did not even mention in its brief the testimony of the witness Singletary, likewise produced by the appellant. The testimony of appellant's wife and the witness Singletary, both put on by the defense, not only waived any objection which might have been had when the State put on proof of the results of Chief Collins search, but emphasized the evidence. There are many ways to express it, but, suffice it to say, the universal rule is that a defendant cannot complain of inadmissible evidence, even over objection, when he, himself, reiterates by other witnesses and re-introduces the same evidence. There is a complete estoppel to complain [fol. 314] on appeal. The Court is requested to consider the authorities cited on page 7 of the State's brief herein, as well as the authorities cited under *Section 1843, 24A C.J.S., Criminal Law*, to the effect that a party will not be permitted to complain of error with respect to the admission or exclusion of the evidence where his contention on appeal is inconsistent with that taken below.

Conclusion

Repeated reference has been made to the exhaustive annotation in *74 A.L.R. 2d* with respect to inattentions or derelictions on the part of counsel. Particular attention is directed to that part of the annotation beginning on page 1426 or 74 A.L.R. 2d having to do with counsel from another jurisdiction; ignorant or experienced counsel. In the prefatory remarks to the annotation on this subject, the text writer says that it seems clear that the fact that private counsel representing the accused was a lawyer in another jurisdiction, but was not admitted to practice before the court in which the defendant was tried, does not con-

clusively show, standing alone, that such counsel was incompetent, *especially where he was associated with local counsel for the defense of the accused.* Without unduly lengthening this brief, any member of this Court who reads the cases in this annotation will readily agree that this is not a case like *Brooks* vs. *State,* upon which the reversal of this case was predicated.

The opinion of the Court in this case has been a matter of great concern to the office of the Attorney General. This office is charged, among other things, with the representation of the State in all criminal appeals in this Court. While Attorney General Joe T. Patterson and this assistant must, of course, do everything within their powers of persuasion to uphold the action of any trial court and any district attorney, this court must recognize that, while there [fol. 315] is no such thing as a confession of error on the part of this department, there are certain cases in which it is held that the purity of the law and the integrity of our procedures must be maintained. This is one of those cases. It is a matter of grave concern to this office and, as stated hereinabove, to every lawyer and judge with whom this case has been discussed to get this Court to reverse on this suggestion of error its original opinion. No consultation has been had with the Secretary of the State Bar to determine the number of lawyers in Mississippi. It is believed to be in excess of sixteen hundred. If the opinion of this Court is to stand, anyone charged with a crime in Mississippi would be wise not to employ a Mississippi attorney, but to employ someone from Louisiana, New York, or some other state. All that would be necessary to guarantee a reversal of a conviction on appeal would be, under the present decision of this Court in this case, to have such visiting lawyer to fail to object to inadmissible evidence and, furthermore, to further prejudice his Mississippi client by introducing in defense other evidence which, upon objection, would have been held inadmissible.

At the risk condemned for repetition, let it not be forgotten that one of counsel of record who participated in the trial below was R. Jess Brown, an experienced trial lawyer in Mississippi. Thus, the presence of Attorney

Brown negatives any unfamiliarity on the part of New York counsel for appellant.

Let it be purposely repeated that, if either Robert L. Carter, Jawn Sandifer, R. Jess Brown or Jack Young will reply to this suggestion of error and brief with an affidavit that they did not know that it was necessary to make a timely objection or motion to suppress any evidence obtained by an unlawful search or seizure, this writer will confess that the opinion of this Court is correct.

[fol. 316] Respectfully submitted,

Joe T. Patterson, Attorney General, By G. Garland Lyell, Jr., Assistant Attorney General.

Certificate of service (omitted in printing).

[fol. 317] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

No. 42,652

[Title omitted]

APPELLANT'S REPLY TO STATE'S SUGGESTION OF ERROR—
Filed July 5, 1963

Comes now Aaron Henry, appellant herein, through his attorneys, and respectfully submits that the opinion of this Honorable Court, entered on June 3, 1963, represents an accurate appraisal of the law and that a mandate should issue forthwith from this Court.

I

Contrary to the contention of counsel for the State of Mississippi, Brooks v. State, 209 Miss., 150, 46 So. 2d 94, is decisive of the instant case which presents an unusual set of circumstances completely within the Brooks case. Admission into evidence and consideration of illegally obtained evidence so infected the case as to deny appellant due process of law.

II

It is clearly established under the decisions of this Honorable Court that the State cannot rely upon the doctrine of estoppel or waiver when it is otherwise unable to sustain its burden of proof and conviction is based in toto upon illegally seized evidence. In this case the illegally seized evidence represented the sole basis upon which the case could have been presented to the jury for determination. For these reasons, as the Court originally stated, there was nothing else upon which a valid verdict could rest.

[fol. 318]

Brief in Opposition to Suggestion of Error

Contrary to the contentions of the State, this Court's decision is not predicated solely upon the failure of appellant's counsel to object to the testimony of Police Chief Collins with respect to an allegedly inoperable cigarette lighter and a quantity of chewing gum wrappers in the ash tray of appellant's car found in the course of an illegal search of that car. The essence of this case appears on page 18 of this Court's opinion, where the Court, quoting from Brooks v. State, 209 Miss., 150, 46 So. 2d 94, said "Errors affecting fundamental rights are exceptions to the rule that questions not raised in the trial Court cannot be raised for the first time on appeal". Since the State of Mississippi alleges that it would never advocate the denial of constitutional rights, it is submitted that acceptance of its contentions would in fact deny to appellant his constitutional right to due process of law. Appellant feels constrained to point out that by not filing a reply brief he neither agreed or consented to the State's arguments as set forth in its brief on appeal.

The brief submitted by the State, which is devoted solely to the effect of incompetent counsel, does not meet the main issue before this Court. As was stated in its opinion, this Court determined that until the testimony of Police Chief Collins, the evidence submitted by the State was insufficient to sustain its case. In truth, the conviction rested upon illegally seized evidence. As a result, the instant case presents extraordinary circumstances within the thesis of

this Court as applied in Brooks v. State, supra. Without [fol. 319] regard to time and objection, admission of the evidence produced through Police Chief Collins was such as to impair and abridge appellant's fundamental and constitutional rights with a resulting denial of due process of law. The philosophy of the Brooks case is reinforced by Brown v. Mississippi, 279 U. S. 278, where the Court reversed a conviction which was procured on the basis of an unconstitutionally coerced confession which constituted the sole evidence upon which that conviction had been predicated. The Court held that the conviction and sentence were void for want of essential elements of due process and that the proceeding thus vitiated could be challenged in any appropriate manner.

Convictions procured by the introduction of such illegally seized evidence obtained in violation of constitutional and fundamental rights must be set aside, particularly when that evidence constitutes the sole basis for the conviction obtained in the Court below. As was stated in Brooks v. State, supra, fundamental constitutional rights rise above the rules of procedure and cannot be waived by counsel for the defendant, particularly where conviction of defendant rests solely upon such an insubstantial basis. Appellant cannot be said to waive the one right which would precipitate his conviction.

In Goldsby v. Harpole, 263 F 2d 71, where the defendant had been represented by outstanding attorneys who waived his right to trial by a jury from which Negroes had been systematically excluded, the Court stated that "Even in handling civil litigation, there are limitations upon implied authority of an attorney to make decisions for his client". Although no objection was raised in the trial Court, the [fol. 320] defendant could not be said to have waived such a fundamental right.

In Johnson v. Zerbst, 304 U. S. 458, the Court stated, "It has been pointed out that Courts indulge every reasonable presumption against waiver of fundamental constitutional rights and we do not presume acquiescence in the loss of fundamental rights. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. A determination of whether there has been an

intelligent waiver of the right to counsel must depend in each case upon the particular facts and circumstances surrounding that case, including the background, experience and conduct of the accused."

It is asserted that counsel for the appellant could not intelligently and knowingly waive the very right which would insure the conviction of their client. Moreover, it is submitted that such a fundamental right of the appellant could not be waived by counsel's misconception of the method to properly exclude incompetent evidence. A waiver must be a voluntary act and made with knowledge. *56 Am Jur 114, Section 14.*

It is conceded that the appellant has the right to waive such rights as are personal to him, such as the right to appear in person and with counsel; to demand the nature and cause of the accusation against him; to meet witnesses face to face; to procure the attendance of witnesses on his behalf, etc. However, those rights in which the State has an interest cannot be waived by the defendant. Only the State has the right to deprive the defendant of his life or liberty. The defendant himself does not have this right and we submit that the defendant could not voluntarily waive a right, such as the one at issue here, when to do so could only result in his conviction. Justice Holmes in Schick v. U. S., [fol. 321] 195 U. S. 65, 24 S Ct. 826, 833, quoting Blackstone had this to say, "The natural life cannot legally be disposed of or destroyed by an individual, neither by the person himself nor by any other of his fellow creatures merely upon their own authority . . . The public has an interest in his life and liberty. Neither can be lawfully taken except in the mode prescribed by law. That which the law makes essential in proceedings involving the deprivation of life or liberty cannot be dispensed with or affected by consent of the accused much less by his mere failure when on trial to object to unauthorized methods."

> "The life and liberty of the citizen is a matter of supreme importance to the State and it should not allow him to throw either away by a failure, intentional or otherwise, to take advantage of his constitutional safeguards". Norman v. State, 160 P 2d 739.

The appellant is somewhat shocked by the enthusiasm of the State to secure a conviction based on concededly incompetent evidence. The State produced its complaining witness who was extremely unsure of the facts and hazy about the identification of his alleged assailant.

In King v. State, 149 So 2d 482, where appellant was convicted of interfering with an officer then attempting to make an arrest, the question of unreasonable search and seizure was raised for the first time on appeal. This Court considered the argument and held that the arrest of the appellant was in violation of his right against unreasonable search and seizure as guaranteed by the Mississippi Constitution of 1890.

In the Brooks, Brown and King cases, the Court did not apply the rule of waiver because of the involvement of a fundamental right of the accused parties. Subversion of fundamental rights, because of superficial procedural requirements, cannot be allowed to determine this case. To [fol. 322] hold otherwise would be to sacrifice substance to form.

As this learned Court pointed out, the State's case was based primarily upon the identity of the appellant. The testimony of the complaining witness was uncorroborated without the tainted evidence disclosed by the inspection of appellant's automobile. Admission of this illegally seized evidence was sufficient to impair the fair trial guaranteed the appellant by Article 3, Section 14, of the Mississippi Constitution of 1890.

The State has placed much stress upon those cases, collected in 74 ALR 2d 1384, beginning at page 1390, concerning writs of habeas corpus or coram nobis which raise the inadequacy of counsel as a denial of due process. A reading of those cases is persuasive that the activities of counsel were but one factor in the obtaining of a conviction. Conversely, in the instant case the success of the entire State's case depended upon the reception and consideration of illegally obtained evidence. The inadequacy of the State's case in no way parallel those cases cited in its brief.

In view of the foregoing, it is respectfully submitted that the State's Suggestion of Error should be overruled and

that a mandate should issue from this Honorable Court in accordance with its opinion rendered on June 3, 1963.

Respectfully submitted,

Jack H. Young, 115½ N. Farish Street, Jackson, Mississippi;

R. Jess Brown, 125½ N. Farish Street, Jackson, Mississippi;

Robert L. Carter, Barbara A. Morris, 20 West 40th Street, New York 18, New York,

[fol. 323] Attorneys for Appellant, By Jack H. Young, Of Counsel.

Certificate of service (omitted in printing).

[fol. 324] [File endorsement omitted]

[fol. 325]

IN THE SUPREME COURT OF MISSISSIPPI

No. 42,652

[Title omitted]

REPLY TO ANSWER TO SUGGESTION OF ERROR—
Filed July 8, 1963

In his reply to the suggestion of error filed herein, appellant has not answered the argument or the authorities set out in the suggestion of error. Even if the testimony of Police Chief Ben Collins was the only testimony as to the identity of appellant, that fact would not be decisive of this case. Contrary to the argument of appellant, he was identified by the prosecuting witness; Eilert, and Eilert's testimony was corroborated with respect to the inoperable cigarette lighter by one of appellant's own witnesses, a mechanic, who testified that shortly after March 3, 1962, appellant brought the cigarette lighter in to have it fixed.

King v. State, —— Miss. ——, 149 So. 2d 482, is not authority for first raising the question involved here in this Court, since in the King case, "The Circuit Court being of the opinion that a constitutional question had been raised, by order entered allowed an appeal to this Court."

It is also interesting to note that none of the counsel for appellant responded to this writer's invitation in the [fol. 326] suggestion of error to file an affidavit that either of them did not know that a seasonable objection must be made to this or any other inadmissible testimony.

Respectfully submitted,

Joe T. Patterson, Attorney General, By G. Garland Lyell, Jr., Assistant Attorney General.

Certificate of service (omitted in printing).

[fol. 327]

IN THE SUPREME COURT OF MISSISSIPPI

No. 42,652

AARON HENRY,

vs.

STATE OF MISSISSIPPI.

OPINION ON SUGGESTION OF ERROR

RODGERS, Justice:

On Suggestion of Error, the original opinion in this case has been withdrawn by this Court and the following opinion is substituted in its place.

The appellant was tried and convicted in the Justice of the Peace Court of Bolivar County, Mississippi, on a charge of disorderly conduct of disturbing the peace of Sterling Lee Eilert. The charge was brought under Section 2089.5, Miss. Code 1942, Rec. On appeal to the County Court, the case was tried de novo, and appellant was again convicted. He was accordingly sentenced to serve sixty days in jail and pay a fine of $250. The Circuit Court affirmed the judgment of the County Court and appellant has appealed to this Court.

The evidence in this case reveals the following facts: On March 3, 1962, Sterling Lee Eilert "hitchhiked" (begged an automobile ride) on the various highways from his home in Memphis, Tennessee, to the intersection of Highways 49 and 61 in Clarksdale, Mississippi. He arrived at this intersection about five o'clock in the afternoon, and about 5:30 o'clock appellant stopped his automobile at this intersection and invited young Mr. Eilert to ride with him. They pro- [fol. 328] ceeded along Highway 61 toward Shelby, Mississippi, and after they had passed Alligator, Mississippi, appellant asked Mr. Eilert about his sex life. It is not necessary to detail the ensuing conversation. It is sufficient to say that the foregoing conversation culminated in assault upon Mr. Eilert, in that appellant reached over and touched his privates. The State witness immediately requested the appellant to stop the automobile, and when it stopped, he got out and went to the back and got his suitcase. He looked at the tag on the car, and although he could not see all of the numbers on the tag, he remembered the number 1798. Mr. Eilert immediately sought the police, first by telephoning and finally by going to the police station. He gave the police a description of the automobile and the driver, as well as the numbers he saw on the tag. The officers promptly radioed Clarksdale for the name of the owner of the automobile from the records of license tags. This request was shown to have been made at 5:56 o'clock. The information was immediately given to the officers, that Aaron Henry was the owner of the automobile described by the witness.

The officers prepared an affidavit, which was signed by the witness Eilert. The affidavit was presented to the Justice of the Peace, Rowe, who issued a warrant for the arrest of defendant Aaron Henry. One of the officers took the warrant and the witness Eilert to Clarksdale and the warrant was turned over to the desk clerk at police headquarters. Notice was given to patrol cars by radio from the Clarksdale police station, notifying them to be on the lookout for appellant, Aaron Henry. This information was received by radio by officer Henry Petty at 6:04 P. M., and he immediately went to the drug store and home of Aaron Henry, but his automobile was not at the drug store or at

his home. Later in the afternoon, appellant's automobile [fol. 329] was located at his home ten or twelve minutes to seven o'clock. Notice was relayed by radio to the chief of police, who went to the home of the defendant and arrested him a few minutes before seven o'clock.

Appellant's defense to the charge was an alibi. His testimony shows that he left the drug store at 4:45 o'clock, and went to the Delta Burial Corporation. This is a funeral home operated by John Melcher. He said he remained at the funeral home until approximately 5:20 P.M.

Defendant introduced several witnesses who testified that they saw him at the funeral home between the hours of 4:45 and 5:20. Defendant also introduced his wife and two other witnesses who testified he arrived at his home about 5:30 or 5:35 o'clock. Defendant also introduced a large number of Negro professional men, doctors, dentists, ministers and professors, as well as colored plantation owners and business men, to prove his good character.

Appellant has presented four assignments of error, on appeal, alleged to have been made in the trial of this case in the court below, but only argues three propositions, namely: (1) The assumption of jurisdiction of the cause by the trial court deprived appellant of his constitutional rights in due process. (2) The court erred in not granting a new trial to appellant on the ground that the county court permitted the State to introduce evidence obtained by an unlawful search of his automobile. (3) Appellant's conviction denied due process of law to the defendant because it rested on insufficient evidence of the essential elements of the crime, and because of error in the court's rulings.

I.

The appellant based his first assignment of error upon "the absence of competent evidence of the existence of an affidavit on March 3, 1962, the date of the commencement [fol. 330] of prosecution of appellant • • • ." Appellant then argues that the justice of the peace had no jurisdiction to issue a warrant for the arrest of the defendant, Aaron Henry, and thereafter, the county court and circuit

court had no jurisdiction of the cause because the defendant was alleged to have been convicted without due process of law.

The theme of appellant's contention is that no affidavit was made before a justice of the peace charging defendant with the crime; that in fact no warrant was issued by the justice of the peace before defendant was arrested. To sustain this thesis, appellant introduced one of his attorneys who testified (over objection of the State) that he called upon the county attorney and asked him if he had the affidavit "pursuant to" the arrest of Aaron Henry. He stated that the county attorney told him he did not have the affidavit, but that it was in the custody of Mr. Rowe, the Justice of the Peace, at Shelby. He said the county attorney advised him it would be necessary to amend the affidavit. This attorney also testified that he called the justice of the peace on the telephone and said that he was informed that he had no knowledge of the arrest of Aaron Henry, and that it did not come before him on the date of the alleged affidavit. Appellant also testified in his own behalf, stating that the warrant served on him was not the warrant in the file certified to the county court by the justice of the peace.

The testimony for the State showed the prosecuting witness Sterling Eilert signed an affidavit and that thereafter the Justice of the Peace Rowe issued the warrant charging defendant with a misdemeanor. The warrant was delivered to Officer Charles Reynolds, who, in turn, delivered it to the desk sergeant at Clarksdale, Mississippi. Chief of Police Ben C. Collins secured the warrant and served it upon the [fol. 331] defendant at his home.

The record further reveals that the defendant's attorney admitted that an amended affidavit was properly substituted for the original which was lodged with the justice of the peace on the 14th day of March (the day the defendant was tried in the justice of the peace court). Defendant was arraigned and tried on the amended affidavit certified to the county court from a justice of the peace court. A copy of this amended affidavit was given to defendant's attorney, and no objection was made to the amended affidavit at the time of the trial in the justice of the peace court.

The appellant points out that Section 1832, Miss. Code 1942, Rec., requires that an affidavit be lodged with the justice of the peace charging commission of a crime before warrant shall issue for arrest of an offender.

This Court has repeatedly held that an affidavit is a prerequisite to prosecution for a misdemeanor. Moreover, we have held that a justice of the peace court has no jurisdiction of a criminal charge until an affidavit has been lodged with it. See the cases cited under the above Code Section 1832. This is also the general rule accepted in a majority of jurisdictions. See: 22 C.J.S., Criminal Law, Sec. 143, p. 379; 14 Am. Jur., Criminal Law, Section 245, p. 937.

Amendments, however, are liberally allowed under our Mississippi procedure so as to bring the merits of a case fairly to trial. The following code sections are illustrative of this point. The applicable part of Section 1202, Miss. Code 1942, Rec., with reference to this subject is in the following language: "On the trial in the circuit court of any case on such appeal the affidavit charging the offense and other proceedings may be amended at any time before a [fol. 332] verdict, so as to bring the merits of the case fairly to trial on the charge intended to be embraced in the affidavits."

Section 2535, Miss. Code 1942, Rec., is in the following language: "When an appeal is presented to the circuit court in any criminal case from the judgment or sentence of the justice of the peace or municipal court, it shall be permissible, on application of the state or party prosecuting, to amend the affidavit, pleading, or proceedings so as to bring the merits of the case fairly to trial on the charge intended to be set out in the original affidavit; the amendment to be made on such terms as the court may consider proper."

The foregoing Code sections are also applicable to appeals to the county court. See Section 1617, Miss. Code 1942, Rec.

We have often held that defective affidavits on which a defendant was convicted in a justice of the peace court could be amended in the circuit court on appeal. Coulter v. State, 75 Miss. 356, 22 So. 872; Triplett v. State, 80 Miss. 379,

31 So. 743; Brown v. State, 81 Miss. 137, 32 So. 952; Mays v. State, 216 Miss. 631, 63 So. 2d 110; Simmons v. State, 179 Miss. 713, 176 So. 726; Moran v. State, 137 Miss. 435, 102 So. 388; Weddell v. Seal, Admr., 45 Miss. 726; Green v. Boone, 57 Miss. 617. See also 31 Am. Jur., Justices of the Peace, Sec. 130, p. 287. This is also accepted as the general rule. See 31 Am. Jur., Justices of the Peace, Sec. 126, p. 285.

Section 1205, Miss. Code 1942, Rec., provides the method of transmitting cases from the justice of the peace court to the circuit court or county court, and Section 1199, Miss. Code 1942, Rec. provides the form of the certificate required to be used to verify the record of the justice of the peace court on appeal.

It is universally accepted as the general rule of law that [fol. 333] where properly authenticated or certificated records have been filed on appeal, they import absolute verity, and the record is the sole, conclusive and unimpeachable evidence of the proceedings in the court below. If the record is incomplete or incorrect, amendment, or correction, must be sought by appropriate proceedings. The record cannot be impeached collaterally by oral testimony or extrinsic evidence aliunde the record. 4A C.J.S., Appeal and Error, Sec. 1143, p. 1201, *et seq.* See also 31 Am. Jur., Justices of the Peace, Sec. 126, p. 285.

In the case of Whittington v. State, 218 Miss. 631, 67 So. 2d 515, this Court pointed out the change in the law as shown by Section 1987, Miss. Code 1942, Rec., and said: "Although under Sections 1199 and 1200, Code 1942, it is still mandatory that the justice of the peace or the mayor or police justice, in appeals from their courts, shall transmit to the proper clerk a certified copy of the record of the proceedings with the original papers, process and appeal bond, yet, if no objection is made to the transcript before or during the trial of the case, on its merits, it will still be conclusively presumed that the transcript was before the court and complied in every respect with the law. Hence no error can be predicated on that ground on appeal to this Court."

The certificate of the justice of the peace and the record in this case show a general affidavit was made on "3-3-62"

charging defendant with "disturbing the peace" and that a capias was issued on "3-3-62."

In the case of Winfield v. City of Jackson, 89 Miss. 272, 42 So. 183, this Court held that where an affidavit was missing, affidavit could be supplied by oral proof on the trial.

In the case of Redus v. Campbell, 85 Miss. 165, 37 So. at 1010, we held that it was competent for the circuit court [fol. 334] to issue the necessary process to require the justice of the peace to produce the original papers in the cause of action.

The most direct and obvious method of procedure, applicable in a case where it is sought to be shown that there was in fact no affidavit made or lodged with the justice of the peace at the time the warrant was issued, is to summon the justice of peace to bring his trial docket into court. He may then be required to testify on a preliminary motion to quash and dismiss a criminal charge against the defendant, whether or not there was in fact an affidavit filed or lodged with him.

We are therefore of the opinion that the trial court was correct in overruling the motion of appellant to quash the amended affidavit charging the defendant with a misdemeanor, although the original affidavit could not be found among the papers certified to the county court; because the record reveals there was an original affidavit lodged with the justice of peace at the time the warrant was issued.

II.

It is next contended by appellant that the court was in error in overruling his motion for a directed verdict, made when the State had rested its case. The second part of this motion is based upon the proposition that the State introduced the testimony of Officer Ben C. Collins, with regard to evidence alleged to have been obtained by an unlawful search of appellant's automobile.

The record shows that Officer Collins testified that after he had arrested Aaron Henry at his home and had conveyed him to the police station, he returned to Henry's home for the purpose of examining the interior of his automobile.

He testified that he went to the door and knocked and finally Aaron Henry's wife came to the door, and he told [fol. 335] her that he would like to look at her car and she said she would get the keys because the car was locked. The officer unlocked the car and turned the switch on, plugged the cigarette lighter in, and discovered that it would not work. He then looked in the ash tray on the right side, and found it to be filled with red Dentyne Chewing Gum wrappers. The officer then said that he asked Aaron Henry's wife and people present "Can you tell me what's in this ash tray?" He then stated: "Aaron Henry's little girl said, yes, sir, them is Dentyne Chewing Gum wrappers, I put them in there about three days ago."

This evidence corroborates the testimony of the prosecuting witness, Sterling Lee Eilert, above set out, wherein he had informed the officers of the color of the upholstery of the automobile, the fact that the lighter would not work, and the ash tray was filled with chewing gum wrappers. There had been very little evidence to corroborate the testimony of Eilert until Officer Collins testified. Charles Reynolds knew the color of the upholstery of defendant's automobile, and knew that the automobile was a "Star Chief Pontiac."

No objection was made to the testimony of Officer Collins with reference to the search at the time it was introduced and defense counsel cross-examined him about the chewing gum wrappers and the ash tray.

After careful examination of this record as a whole, we have come to the conclusion that the search of Aaron Henry's locked automobile without a search warrant, at a time when the automobile was in defendant's driveway, was an unlawful search and was in violation of Section 23, Miss. Constitution 1890.

In 1922, the Mississippi Supreme Court adopted the exclusionary rule announced in Weeks v. United States, 232 U.S. 383, in Tucker v. State, 128 Miss. 211, 90 So. 845. Since that time this Court has accumulated a great wealth of opinions which have meticulously followed the exclusionary

[fol. 336] rule rejecting testimony obtained by unlawful search and seizures.[1]

In the case of Boyd v. State, 206 Miss. 573, 40 So. 2d 303 (1949), this Court pointed out that the search of an automobile without a warrant was unauthorized, and that an officer would not be permitted to invade the private premises of a defendant without a search warrant, and search an automobile in his garage, after the automobile had come to rest at the completion of the journey. See also Brooks v. State, 209 Miss. 150, 46 So. 2d 94. Cf. Smith v. State, 240 Miss. 738, 128 So. 2d 857.

III.

It is suggested by the Attorney General in the instant case that the wife of defendant consented to the search of the automobile and thereby waived the necessity of a search warrant. We prefer, however, to follow the great weight of authority which holds that a wife cannot waive the constitutional rights of her husband. We hold that ap-

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[fol. 340]

[1] At one time the rule was firmly settled, that evidence obtained by an unreasonable, unwarranted and unlawful search and seizure, if otherwise pertinent to the issue was not rendered incompetent and inadmissible because of the wrongful method in which it was obtained. See 20 Am. Jur., Evidence, § 394, p. 354. This rule passed through various stages, as shown by the following cases: *Boyd* v. *United States*, 116 U. S. 616 (1886); *Weeks* v. *United States*, 232 U. S. 383, 34 S. Ct. 341, 58 L. Ed. 652, LRA 1915B 834, Ann. Cas. 1915C, 1177 (1914); *Wolf* v. *Colorado*, 338 U. S. 25 (1949); *McNabb, et al.* v. *United States*, 318 U. S. 332 (1943); *Irvine* v. *California*, 347 U. S. 128 (1954); *Elkins* v. *United States*, 364 U. S. 206 (1960); *Agnello, et al.* v. *United States*, 269 U. S. 20 (1925); *Rochin* v. *California*, 342 U. S. 165 (1952).

Finally, in the case of *Mapp* v. *Ohio*, 367 U. S. 643, 81A S. Ct. Rep. 1684, the Supreme Court of the United States held that the evidence obtained by unconstitutional search was inadmissible in state prosecutions, and vitiated state convictions by bringing the exclusionary rule established by the Fourth Amendment under the "due process" clause of the Fourteenth Amendment. The Court said: "Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government."

pellant's wife did not waive his constitutional rights by consenting to the search of his automobile. Cofer v. United States, 37 Fed. 2d 677 (Miss. 1930); Gilliland v. Commonwealth, 224 Ky. 453, 6 S.W. 2d 467; Hays v. State, 261 P. 232 (Okla.); Rose v. State, 254 P. 509 (Okla.); 47 Am. Jur., Search and Seizures, Sec. 72, p. 548. Cf. Brewer v. State, 142 Miss. 100, 107 So. 376.

IV.

As a general rule in jurisdictions which adhere to the rule denying the admissibility of evidence secured by an unlawful search and seizure, the accused must ordinarily interpose a timely challenge to the validity of the seizure and admission of evidence. 20 Am. Jur., Evidence, Sec. 396, p. 357; 23A C.J.S., Criminal Law, Sec. 1060, p. 7. In some jurisdictions, a preliminary motion is made for [fol. 337] the suppression of evidence. In Mississippi, however, it is only necessary to object to admission of the evidence at the time it is offered. See 23A C.J.S., Criminal Law, Sec. 1060, at p. 14; Holmes v. State, 146 Miss. 351, 111 So. 860.

It has been a long established procedural rule in this State that parties prejudiced by the introduction of inadmissible evidence are required to object to its admissibility at the time it is offered so that the trial judge may determine its admissibility before it is submitted to the jury. Moreover, error cannot be predicated upon admission of evidence to which no objection was made. McNutt v. State, 143 Miss. 347, 108 So. 721; Harris v. State, 153 Miss. 1, 120 So. 206; Williams v. State, 171 Miss. 324, 157 So. 717; Dick, Aleck, and Henry, Slaves v. State, 30 Miss. 593; Loftin v. State, 150 Miss. 228, 116 So. 435; Holmes v. State, 146 Miss. 351, 111 So. 860; Carr v. State, 187 Miss. 535, 192 So. 569; Wright v. State, 212 Miss. 491, 54 So. 2d 735.

We have also held that a motion to exclude inadmissible testimony at the conclusion of the evidence comes too late. Harris v. State, supra; Dick v. State, supra; Peters v. State, 106 Miss. 333, 63 So. 666.

We have therefore reached the conclusion that since the defendant made no objection to the introduction of the

illegally obtained evidence, at the time it was offered, he waived his right to object to such evidence and error cannot now be predicated upon the failure of the trial judge to exclude such evidence from the consideration of the jury. Johnson v. State, 220 Miss. 452, 70 So. 2d 926; Baggett v. State, 219 Miss. 583, 69 So. 2d 389; Gillespie v. State, 215 Miss. 380, 61 So. 2d 150; Bennett v. State, —— Miss. ——, 52 So. 2d 837; White v. State, 202 Miss. 246, 30 So. 2d 894; Poole v. State, 231 Miss. 1, 94 So. 2d 239.

[fol. 338] We are of the further opinion that this case does not come within the rule announced by this Court in Brooks v. State, 209 Miss. 150, 46 So. 2d 94, because there is no substantial basis upon which it can be said that the appellant's counsel in this trial were so inadequate that they permitted a judicial farce to be accomplished. These three attorneys, namely, a Mississippi lawyer and two others out of New York City, possess high literary and legal attainments, and are all experienced trial lawyers. They were chosen by the appellant and he has made no complaint of inadequacy against them. A reading of this record demonstrates that their positions were at all times highly adversary in behalf of their client, and that judicial character was present in the proceedings at all times. In such circumstances, even if honest mistakes of counsel in respect to policy or strategy or otherwise occur, they are binding upon the client as a part of the hazards of courtroom battle. On this principle, compare the following cases from other jurisdictions: Woodell v. Maryland, 162 A. 2d 468 (1960); Wilson v. State, 51 N.E. 2d 848 (1943), an Indiana case; Hendrickson v. State, 118 N.E. 2d 493 (1954), an Indiana case; People v. Robinson, 177 N.E. 2d 132 (1961), an Illinois case; O'Malley v. U.S., 285 Fed. 2d 733 (6th Cir.); Lotz v. Sacks, 292 Fed. 2d 657 (C.A. 6th Ohio); Popeko v. U.S., 294 Fed. 2d 168 (1961); U. S. v. Handy, 203 Fed. 2d 407 (3rd Cir. 1953); Arellanes v. U.S., 302 Fed. 2d 603 (C.A. 9 1962).

Moreover, the defendant without objecting to the illegally obtained evidence, proceeded to cross-examine the State witnesses as to the evidence he now claims should not have been admitted so as to fully develop all the facts. He also introduced the same evidence by his own witnesses

including photographs of the interior of the car. We are, [fol. 339] therefore, of the further opinion that the admission of such evidence, unlawfully obtained, if error, was cured by the introduction of the same testimony by the defendant and he is estopped to complain that such evidence was erroneously admitted in the trial for the consideration of the jury. Prine v. State, 158 Miss. 435, 130 So. 687; Weatherford v. State, 164 Miss. 888, 143 So. 853; Smith v. State, 166 Miss. 893, 144 So. 471; Musslewhite v. State, 212 Miss. 526, 54 So. 2d 911; Spivey v. State, 212 Miss. 648, 55 So. 2d 404; Barnes v. State, 164 Miss. 126, 143 So. 475; Sykes v. City of Crystal Springs, 216 Miss. 18, 61 So. 2d 387.

V.

We do not believe that there is any merit in the contention of appellant that the evidence is insufficient to support a verdict of guilty. The defense offered by appellant was an alibi, and we are of the opinion that such evidence was a question for the determination of the jury. Prisock v. State, —— Miss. ——, 141 So. 2d 711; Cobb v. State, 235 Miss. 57, 108 So. 2d 719; Passons v. State, 239 Miss. 629, 124 So. 2d 847.

The former judgment reversing this case for a new trial is hereby set aside and a judgment will be entered affirming the judgment and sentence of the Circuit Court. The judgment of the lower court is therefore affirmed.

Suggestion of Error sustained, former opinion withdrawn and new opinion rendered affirming judgment of lower court.

All Justices concur.

[fol. 341]

IN THE SUPREME COURT OF MISSISSIPPI

Court Sitting

AARON HENRY,

vs. No. 42,652

STATE OF MISSISSIPPI.

JUDGMENT—July 12, 1963

This cause this day came on to be heard on the suggestion of error filed herein and this Court having sufficiently examined and considered the same and being of the opinion that the same should be sustained doth order and adjudge that said suggestion of error be and the same is hereby sustained, the former opinion withdrawn, a new opinion entered, and the following entered as the final judgment in this cause affirming the case, To-wit: This cause having been submitted at a former day of this Term on the record herein from the Circuit Court of Bolivar County, Second District, and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 20th day of November 1962—a conviction of disorderly conduct under Section 2089.5 of the Mississippi Code of 1942 Recompiled and a sentence to pay a fine of $250.00 and costs and to serve a term of 60 days in jail—be and the same is hereby affirmed. It is further ordered and adjudged that the State of Mississippi do have and recover of and from the appellant, Aaron Henry, and Dr. E. P. Burton and Rev. Isaac Daniel, sureties on the appeal bond herein, all of the costs of this appeal to be taxed, for which let proper process issue.

[fol. 342] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

No. 42,652

AARON HENRY, Appellant,

vs.

STATE OF MISSISSIPPI, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 15, 1963

Notice is hereby given that Aaron Henry, the above named appellant, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of the State of Mississippi sustaining the Suggestion of Error filed by the State of Mississippi and affirming the judgment of conviction of appellant on the 12th day of July, 1963.

This appeal is taken pursuant to Title 28, United States Code Annotated, Paragraph 1257.

I

Appellant was convicted of the misdemeanor of "disorderly conduct" under Section 2089.5 of the Mississippi Code of 1942, Recompiled, in the Court of V. E. Rowe, Justice of the Peace of Bolivar County, Mississippi; that appellant appealed his conviction to the County Court of Bolivar County, Mississippi, where a trial de novo was had and appellant again convicted; that his conviction in the County Court of Bolivar County was appealed to the Circuit Court of Bolivar County and was affirmed by said Circuit Court; that an appeal was allowed to the Supreme Court of Mississippi and that on the 3rd day of June, 1963, the Supreme Court of Mississippi reversed and remanded said cause; that thereafter the State of Mississippi filed a Suggestion of Error which was sustained and the judgment of conviction was affirmed by the Supreme Court of the State of Mississippi on the 12th day of July, 1963, and it is from this final judgment of the Supreme Court of Mississippi that this appeal is taken.

II

The Clerk is hereby notified to prepare a transcript of the record in this cause for transmission to the Clerk of the [fol. 343] Supreme Court of the United States and to include in said transcript the following:

(1) All records from the Bolivar County Justice of the Peace Court of V. E. Rowe.

(2) All Motions filed in the Bolivar County Court in this cause and the rulings of the Court on same.

(3) Complete transcript of the testimony taken during the trial of the case in the County Court of Bolivar County.

(4) Verdict of Jury.

(5) Judgment of County Court.

(6) Appellant's Assignment of Error in Circuit Court.

(7) Judgment of Circuit Court.

(8) Appellant's Notice of Appeal to the Supreme Court of the State of Mississippi.

(9) Appellant's Assignment of Error in Supreme Court.

(10) Opinion of Supreme Court of State of Mississippi entered on June 3, 1963, reversing and remanding cause.

(11) Suggestion of Error filed on behalf of State, and reply thereto by appellant.

(12) Order sustaining Suggestion of Error and affirming judgment of condition of lower Court.

(13) Order Granting bail with Supersedeas.

(14) Certificate and acknowledge of service of a copy of this Notice by the Attorney General of the State of Mississippi.

III

The question sought to be reviewed is that petitioner, Aaron Henry, was denied his constitutional rights and guaranties to trial by an impartial jury, in that the rulings of the Court in the trial of his case in the Court below denied petitioner a fair and impartial trial by jury guaranteed him under the Constitutions of both the State of Mississippi and the United States.

Article III, Section 23, Constitution of Mississippi.

[fol. 344] Article III, Section 26, Constitution of Mississippi.

The IV Amendment to the Constitution of the United States.

The V Amendment to the Constitution of the United States.

The VI Amendment to the Constitution of the United States.

The XIV Amendment to the Constitution of the United States.

Jack H. Young, 115½ N. Farish Street, Jackson, Mississippi;

R. Jess Brown, 125½ N. Farish Street, Jackson, Mississippi;

Robert L. Carter, Barbara A. Morris, 20 West 40th Street, New York, New York,

Attorneys for Appellant, By Jack H. Young, Of Counsel.

Acknowledgment of Service (omitted in printing).

[fol. 345] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

No. 42,652

AARON HENRY, Appellant,

vs.

STATE OF MISSISSIPPI, Appellee.

PETITION FOR ADMITTANCE TO BAIL WITH SUPERSEDEAS—Filed July 15, 1963

To the Honorable Supreme Court of Mississippi:

Comes Aaron Henry, appellant in the above styled and numbered cause and would with respect show unto the Court as follows:

I

That the appellant was convicted of disorderly conduct under Section 2089.5 of the Mississippi Code of 1942, Recompiled, in the Court of V. E. Rowe, Justice of the Peace of Bolivar County, Mississippi; that appellant appealed his conviction to the County Court of Bolivar County, Mississippi, where a trial de novo was had and appellant convicted; that his conviction in the said County Court of Bolivar County was appealed to the Circuit Court of Bolivar County and was affirmed by said Circuit Court; that an appeal was allowed to the Supreme Court of Mississippi and that thereafter on the 3rd day of June, 1963, the Supreme Court of Mississippi reversed and remanded said case; that the State of Mississippi filed a Suggestion of Error which was sustained and judgment of conviction was affirmed by this Court on the 12th day of July, 1963; that from this final judgment of the Court of last resort of this State, the Supreme Court of Mississippi, appellant has filed with the Clerk of this Court his Notice of Appeal therefrom to the Supreme Court of the United States in accordance with Title 28, United States Code Annotated, Para-

graph 1257, a copy of which Notice of Appeal is attached to this petition.

II

Appellant would show unto the Court that he is entitled to bail under the laws of this State pending the outcome of his appeal to the Supreme Court of the United States, and appellant further shows that he has been at liberty under bail pending the final disposition of this cause in the Su- [fol. 346] preme Court of Mississippi, in the sum of $1,000.00, to the conditions of which bail bond he has, at all times, responded.

Wherefore, premises considered, appellant prays that this Honorable Court will issue its order granting him bail with supersedeas in such amount as the Court deems meet and proper in the premises, until the final disposition of his cause, said bail to be conditioned according to law, with the sureties thereon to be approved by the Clerk of this Court, and said bond being further conditioned for the payment of all costs accrued or to accrue in this cause as may be adjudged against the appellant.

Respectfully submitted,

Jack H. Young, 115½ N. Farish Street, Jackson, Mississippi;

R. Jess Brown, 125½ N. Farish Street, Jackson, Mississippi;

Robert L. Carter, Barbara A. Morris, 20 West 40th Street, New York, New York,

Attorneys for Appellant, By Jack H. Young, Of Counsel.

[fol. 347] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 42,652

AARON HENRY, Appellant,

vs.

STATE OF MISSISSIPPI, Appellee.

ORDER FOR ADMITTANCE TO BAIL WITH SUPERSEDEAS—July 15, 1963

This cause coming on to be heard on the petition of Appellant herein for bail with supersedeas, pending petition for writ of certiorari to U. S. Supreme Court, and the Court, having read and examined the same, is of the opinion and doth hereby order that the same should be granted. It is, therefore,

Ordered that the appellant, Aaron Henry, be admitted to bail with supersedeas in the amount of $2500.00, conditioned according to law and with proper sureties thereon, and the sureties upon said bail bond to be approved by the Clerk of this Court; said bail bond to be further conditioned for the payment of all costs accrued or to accrue and adjudged against the appellant.

Ordered and Adjudged this 15th day of July, 1963.

W. N. Ethridge, Jr., Associate Justice of the Supreme Court of the State of Mississippi.

[fol. 348] Supersedeas Bond on appeal for $2500. approved and filed July 16, 1963 (omitted in printing).

[fol. 350] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 351]

SUPREME COURT OF THE UNITED STATES

No. 539, October Term, 1963

AARON HENRY, Petitioner,

vs.

MISSISSIPPI.

ORDER ALLOWING CERTIORARI—February 17, 1964

The petition herein for a writ of certiorari to the Supreme Court of the State of Mississippi is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.